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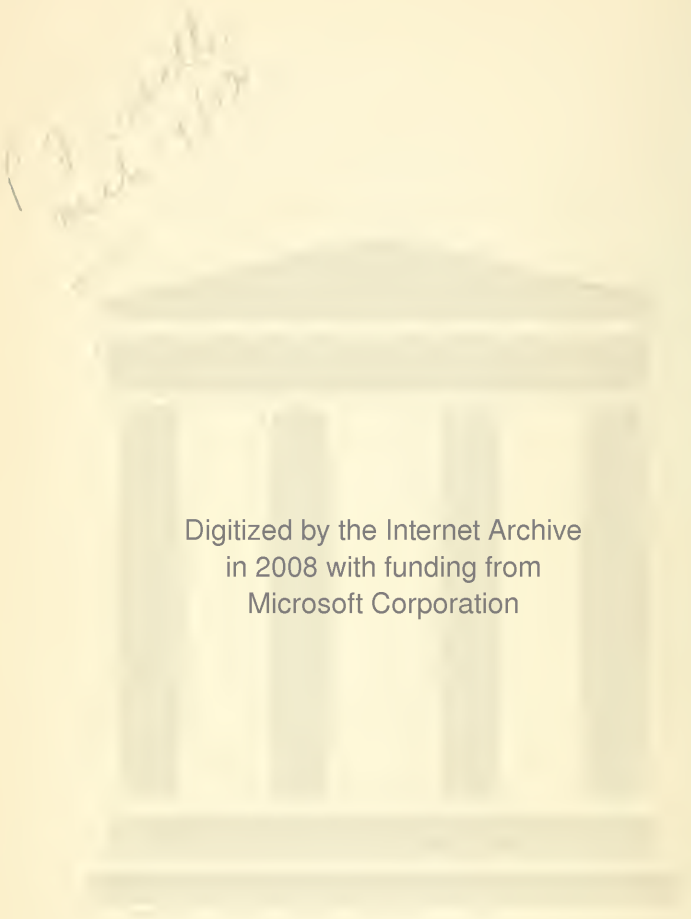

THE RIGHTS AND DUTIES OF JUSTICES.

THE

RIGHTS AND DUTIES

OF

JUSTICES.

BY

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PREFACE.

In the following pages we have endeavoured to supply a want, which during many years' experience in the administration of justice we have found to exist, and to set out in a handy and brief manner, not weighed down with references to cases, the rights and duties appertaining to the office of Justice of the Peace.

While not for a moment claiming for this book the attributes of Stone's Justices' Manual, we believe that it will prove especially useful to Justices by enabling them to discover at a glance the nature and extent of their jurisdiction and the proper procedure in the many cases coming before them at Petty and other Sessions.

We would draw attention to the chapters on the Criminal Evidence Act and the Inebriates Act, which, we think, will be found to deal with these matters in a concise and convenient form, and to that on Justices' Fees, a subject which has recently attained much prominence.

We have great pleasure in acknowledging the invaluable assistance which we have received from Mr. Frederick Oldfield, Barrister-at-Law, of the Inner Temple, to whom any success which this book may attain will be largely due.

R. D. M. L.
A. H.

November, 1899.

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Page 30, *for* "2 Hen. 5, st. 1, c. 2," *read* "st. 2, c. 1."

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RIGHTS & DUTIES OF JUSTICES.

CHAPTER I.

HISTORY OF THE OFFICE.

Justices of the Peace.

THE office of Justice of the Peace, some centuries ago, appears to have been regarded in two very different manners by eminent men of the time; for we are told on the one hand, by Lord COKE, that "the whole Christian World hath not the like office as Justice of the Peace if duly executed," and on the other, by Lord COWPER, that Justices of the Peace were "men sometimes illiterate, and frequently bigoted and prejudiced."

Powers of Justices.

Still, whatever may have been the character borne by those who filled this important office, it is certain that the powers which they possessed, from the

earliest date on which we read of Justices, were both varied and important. It was their duty, in addition to keeping the peace, to inquire the truth "of all felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, forestallings, regratings, engrossings, and extortions whatever"; so we may safely conclude that if but one-half of these varied offences against the law were properly dealt with, the life of a Justice of the Peace was certainly a busy one.

Origin of the Office.

The office of Justice of the Peace seems to have been instituted for the first time (for no earlier record appears on the Statute Book) in 1326, when a statute was passed in the first year of King Edward the Third's reign, which enacted: "For the better keeping and maintenance of the Peace, the King will, that in every county good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the Peace." From this small beginning, then, it may truly be said, that this great national institution, which no other country boasts, unique in its nature and admirable in its working, has developed itself to that acme of utility which all who have studied its labours, admit has been attained by the unpaid Magistracy of the present day.

Development of the Office.

To King Edward the Third and his advisers must be given the credit not only of instituting but also of developing this important office, and of greatly extending the powers of the Justices, for by another statute, passed in the eighteenth year of his reign, it was enacted "That Two or Three of the best of Reputation in the Counties shall be assigned Keepers of the Peace by the King's Commission, and at what Time Need shall be, the same, with other wise and learned in the Law, shall be assigned by the King's Commission to hear and determine Felonies and Trespasses done against the Peace in the same Counties and to inflict Punishment reasonably according to Law and Reason, and the Manner of the Deed."

The additional powers conferred upon the Justices by this statute seem to have been well used, and to have redounded to the advantage of the country; for some sixteen years afterwards it was evidently recognised by the Government that the experiment which had thus been ventured upon had stood well the numerous tests to which it had been subjected, and that the time had come for establishing Justices of the Peace on a more permanent and satisfactory basis,—at the same time still further adding to the powers which they had shown, during their

thirty-three years' probation, they could use so well.

In 1360, yet another statute was passed, the importance of which can hardly be exaggerated, conferring, as it did, upon the justices the widest discretionary powers with regard to the chastisement of offenders, and granting to them Writs of Oyer and Determiner to enable them to deal with all felonies and trespasses committed in their respective counties. This statute enacted amongst other things "That in every County of England shall be assigned for the keeping of the Peace, one Lord, and with him three or four of the most worthy in the County, with some learned in the Law, and they shall have Power to restrain the Offenders, Rioters, and all other Barators, and to pursue, arrest, take, and chastise them according to their Trespass or Offence; and to cause them to be imprisoned and duly punished according to the Law and Customs of the Realm, and according to that which to them shall seem best to do by their Discretions and good Advisement; and also to inform them, and to inquire of all those that have been Pillors and Robbers in the Parts beyond the Sea, and be now come again, and go wandring, and will not labour as they were wont in Times past, and to take and arrest all those that they may find by Indictment, or by Suspicion, and to put them in Prison."

By this statute Justices are also given power for the first time to take sureties for good behaviour from persons that "be not of good Fame." This statute, which, as we have seen, confers such vast, and to a large extent arbitrary powers on Justices, in its final clause imposes a slight restriction by enacting that fines imposed by them be reasonable and just, having regard to the quantity of the trespass, and the causes for which they be made.

From the reign of Edward the Third down to that of Queen Victoria no powers of any great importance were added to those conferred on Justices of the Peace during the reign of the former monarch. It is true that some fifty years later, in 1414, they were empowered to enforce the Statutes of Labourers, and in 1486, to admit prisoners to bail, which apparently prior to that date they had no authority to do, but with these trifling exceptions the only additional powers with which they were invested were those of sitting as Trustees or Commissioners of Roads, a power given to them in 1822 and 1824, and taking a statutory declaration voluntarily offered, which they were authorised to do in the year 1835. Notwithstanding, however, that their powers remained practically the same throughout this period, there are still some points of interest in relation to their office which may well be mentioned.

Wages of Justices.

For instance, in 1388, it was enacted that the wages of Justices should be four shillings a day, and an additional two shillings a day for the Justices' clerk, these amounts to be subtracted from the fines levied, which doubtless acted on the Justices as an incentive to impose fines in lieu of imprisonment, at any rate until the requisite amount for the wages bill had been provided. Two years later the wages or "estreats," of the Justices, as they were then called, were doubled, but probably in view of the fact that this might cause the amount of the fines receivable by the State to visibly decrease it was enacted that no Duke, Earl, Baron, or Banneret should be allowed wages.

Compulsory attendance at the Sessions.

In return for their wages the Justices were placed under certain restrictions and were obliged under pain of punishment to attend the sessions, which it was enacted were to be held every quarter of a year at least, but Judges and Serjeants-at-Law were exempted and were only obliged to attend when convenient.

Residential Qualification.

In 1414 the qualification of residence was insisted upon, for in that year a statute was passed providing

that Justices should be "resiant," and again ordering that they should hold their sessions four times a year at least; and a few years earlier we find it enacted, in view of the fact that persons had been illegally imprisoned in castles and other places, that Justices should only imprison people in the Common Gaol.

Victorian Legislation.

Endowed with such powers as we have indicated, Justices of the Peace for five hundred years held sway in the land, deriving their authority from the old statutes which have been mentioned, and it was not until the year 1848, the Metropolitan Police District having been constituted and provisions made for the appointment of Magistrates in 1829, that their powers and duties were strictly defined and rules laid down for their conduct and protection. By the several beneficent Acts of 1848, relating to indictable offences, summary convictions, and the protection of Justices, the historical stage of their existence, of interest more to the student of history than of law, may be said to have been concluded, and powers given to and duties conferred upon them of which they are in possession and to which they are subject when acting by virtue of Her Majesty's Commission at the present day.

CHAPTER II.

QUALIFICATION AND DISQUALIFICATION OF JUSTICES.

Qualification of Justices.

The qualification which it is provided by law shall be possessed by an aspirant for a Commission as Justice of the Peace, is of two kinds, the first and oldest, the estate qualification enacted by 18 Geo. 2, c. 20, amending a statute passed thirteen years before, and the second, a qualification of much more recent date, that introduced in 1875, based on occupation.

Estate Qualification.

By the Georgian Statute, it was enacted that no person should be made a Justice unless possessed of an estate in land in England or Wales, of the clear yearly value of 100*l.*, or unless he was entitled to a reversion of the value of 300*l.* per annum.

Occupation Qualification.

The Victorian Act provided that two years occupation of a dwelling-house in England or Wales,

assessed to inhabited house duty at 100*l.*, and being rated thereon should be a sufficient qualification, the proviso being added that no Justice should continue to act after having ceased for twelve months to have this qualification.

Oath of Justices.

Before a Justice can act as such, it is necessary for him to subscribe an oath or affirmation declaring that he is possessed of the necessary qualification.

Penalty for improperly acting as Justice.

Should he act either without being properly qualified, or without subscribing the oath, he is liable to a penalty of 100*l.*, half of which goes to the informer.

Exceptions—Certain Places—Certain Persons.

There are, as would be expected, some exceptions to the rule; for instance, no qualification is required in the case of Justices in cities which are counties, and in places which have Justices by charter. Peers and eldest sons of peers and knights of the shire were also excepted by the Georgian Statute, as were the principal officers in the navy, the Board of Green Cloth, and heads of colleges at Oxford and Cambridge.

Metropolitan Police Magistrates.

By the Metropolitan Police Court Act of 1829, it was enacted that the Magistrates to be appointed under that Act, need not possess the estate qualification, the only one which then existed.

Stipendiary Magistrates.

This exemption was also granted to stipendiary Magistrates by 26 & 27 Vict. c. 97.

County Court Judges.

A like exception was made in 1888, in the case of a county court Judge being appointed a Justice of the Peace for the district in which he is Judge, without being qualified as required by law.

Chairmen of County Councils.

By the Local Government Act, 1888, which established county councils, it was provided that chairmen of county councils should be *ex officio* Justices of the Peace for the county.

Chairmen of District Councils.

By the Parish Councils Act of 1894, it was enacted, following the lines of the former Act, that

the same honour should likewise devolve *ex officio* on chairmen of district councils, and that in neither of these cases should it be necessary for the recipients when subscribing the oaths required by law, to take that respecting the qualification by estate.

Disqualification of Justices.

With respect to the disqualification imposed by law on Justices acting in cases in the decision of which they are interested, the need for the greatest caution cannot be too strongly insisted upon.

Pecuniary Interest.

Pecuniary interest in a Justice, however slight, vitiates the decision of the Court in the deliberations of which he takes the slightest part, and the presence of one interested Justice on the Bench, it was clearly laid down in *R.* v. *London County Council, ex parte Akkersdyk*, [1892] 1 Q. B. 190, which approved and affirmed previous decisions, is sufficient to render void the decision of the Bench.

Non-pecuniary Interest.

The question of "interest" on the part of a Justice with reference to a particular case, apart from that of pecuniary interest, must always be one

of some intricacy, and doubtless it is on this account that we find in many statutes certain classes of Justices expressly disqualified from dealing with cases arising under those statutes.

Hat Trade Cases.

By 17 Geo. 3, c. 55, an Act regulating the hat trade, hat-makers or felt-makers are disqualified from acting as Justices in the case of any journeyman hatmaker or apprentice charged with an offence under that Act, or any other regulating the hat trade.

Trade Disputes.

Justices who are masters, manufacturers or agents, are prohibited from acting in cases arising under 5 Geo. 4, c. 96, an Act relating to the arbitration of disputes between masters and workmen.

Excise Cases.

By 7 & 8 Geo. 4, c. 53, it is provided that in excise cases, no officer of excise is to act as Justice, nor any excise trader, in any case relating to his trade.

Bread Act Cases.

By 6 & 7 Will. 4, c. 37, millers, mealmen, and bakers, are restrained from sitting as Justices under that Act, the Bread Act.

Highway Board Cases.

By 25 & 26 Vict. c. 61, which empowers Justices to sit on highway boards, it is expressly provided that no Justice is to act as a Justice in any matter in which he has acted on the highway board, and in which the decision of the board is appealed against.

Trades Union, Factory and Truck Act Cases.

In the Trades Unions Act, 1871, interested persons are disqualified from acting as Justices under the Act, a disqualification also extended by the Factory Act, 1878, to the occupier of a factory or workshop, and his father, son, or brother with reference to an offence in his factory or workshop; and by the Truck Act, 1887, a person engaged in the same trade as an employer charged under the Act, is prohibited from acting as a Justice on the hearing of the case.

Cases relating to Coal Mines.

This principle of "interest" is still further extended by the Coal Mines Regulation Act, 1887, which provides that no person who is the owner, agent, or manager of any mine, or a miner or miner's agent, or the father, son, or brother, or father-in-law, son-in-law, or brother-in-law of such

owner, agent, or manager, or of a miner or miner's agent, or who is the director of a company being the owner of a mine, shall sit as Justice on the trial of any offence under the Act, without the consent of both parties.

Licensing Act Cases.

It should also be mentioned, that under the Licensing Acts, no Justice can act, save in cases of drunkenness, who is in any way interested in the liquor trade, but this subject will be dealt with in a later chapter.

Attorneys, etc., in their own Counties.

Besides the above special disqualifications which only attach in particular cases, it is also provided by 34 & 35 Vict. c. 18, that no attorney, solicitor, or proctor, shall act as a Justice for the county in which he carries on business.

Undischarged Bankrupts.

By 46 & 47 Vict. c. 52, undischarged bankrupts are disqualified from acting as Justices.

Persons convicted of Corrupt Practices.

A conviction for corrupt practices in a Parliamentary election, renders the offender incapable of

acting as a Justice of the Peace for seven years from the date of his conviction, this being enacted by 46 & 47 Vict. c. 51; and in the following year, those guilty of corrupt practices in a municipal election were also rendered incapable of so acting.

Sheriff of a County.

There is yet one more instance of general disqualification, a sheriff of a county being by 50 & 51 Vict. c. 55, prohibited from acting as a Justice of the Peace during his year of office as sheriff.

Persons expressly declared capable of acting.

On the other hand, in certain cases where Justices would, in default of enactment to the contrary, have been prohibited from acting, the law has seen fit to make exceptions.

Justices though Ratepayers, in various cases affecting the Rates.

By 16 Geo. 2, c. 18, Justices are empowered to act in cases relating to parishes or places where they themselves are rated; and 30 & 31 Vict. c. 115 removes the disqualification under which Justices previously laboured from acting in cases where the penalty to be imposed goes to a fund to which, as ratepayers, they are liable to contribute; and by

38 & 39 Vict. c. 55, the Public Health Act, Justices are empowered to sit under that Act although members of a local authority or ratepayers; this power being extended by the Public Health (London) Act, 1891, to Justices of London who are ratepayers or members of a sanitary authority. It is interesting also to note that under an old Act for the prevention of swearing, which, though unrepealed is practically obsolete (19 Geo. 2, c. 21), Justices were empowered to act, although ratepayers, and were directed to fine persons guilty of using bad language, the fine varying with the position of the offender; for while a day labourer, a common soldier, sailor or seaman was only mulcted in the sum of one shilling, and other persons under the degree of a gentleman two shillings, the sum of five shillings was the amount to be paid by any one of or above the degree of a gentleman.

Commissioners.

A Justice, being a commissioner, it was expressly enacted should not be incapable of acting under the Commissioners Act, 1847, by reason of his being a Commissioner.

Conservators.

By 28 & 29 Vict. c. 121, it was provided that no Justice should be disqualified from acting under

the Salmon Fisheries Acts on account of his being a conservator or a member of a board of conservators, or a subscriber to a society for the protection of salmon or trout so long as the offence in question was not committed on his own land.

In Gas Act Cases.

In the Gas Works Clauses Act, 1847, it was enacted that no Justice should be disqualified from acting under the Act owing to his being liable for the payment of gas-rate. From this enactment and from the others of like nature mentioned above the principle may well be deduced that it is not the intention of the Legislature to allow indirect interest of a petty nature to interfere with the administration of justice by rendering incapable of acting in such cases those who from their position and attainments are most qualified to deal with the several questions on which their judgment is required.

CHAPTER III.

SUMMARY JURISDICTION OF JUSTICES.

Information—Summons.

Upon an information being laid before one or more Justices of the Peace for any county or place within England or Wales that any person has committed any offence or any act for which he is liable by law, or is suspected of having committed any such offence or such act within the jurisdiction of such Justice or Justices such Justice or Justices may issue a summons, stating shortly the matter of such complaint, directed to such person, calling upon him to appear at a certain time or place before a Justice or Justices of the same county or place to answer to the said complaint and to be further dealt with according to law.

Service of Summons.

Every such summons must be served upon the person to whom it is directed or left with some person for him at his last or most usual place of abode. The issue of the summons is in the discretion of the Justices.

Warrant in default of appearance of Person summoned.

If the person so served with such summons does not appear at the time and place appointed therein, and if it be established to the satisfaction of the Justice or Justices, on oath or affirmation, that such summons has been served personally or left with some person for him at his last or most usual place of abode, and that a reasonable time has elapsed since the service of such summons and the time appointed for appearing to the same, it is lawful for him or them to issue a warrant for the apprehension of such person so summoned to bring him before a Justice of the Peace for the same county or place, or, before issuing such warrant, to adjourn the summons for special notice to attend to be served on such person.

Warrant in the first instance.

The Justices may also, if they think fit, in the first instance issue a warrant for the apprehension of the person against whom the complaint is made, but this must be upon oath or affirmation substantiating the matter of the information.

Proceedings ex parte in default of appearance of Person summoned.

If the person summoned does not appear at the time and place mentioned in the summons, the Justices may proceed to hear and determine the complaint, but only on satisfactory proof of the service of the summons. The summons or warrant must also be for an offence within their jurisdiction, and for which the offender is liable, on summary conviction, to be imprisoned or fined, or otherwise punished, or in a case where they have authority to make an order for the payment of money or otherwise.

Indictable Offences by Children which may be dealt with summarily.

There are certain indictable offences which Justices can deal with summarily, viz.:

When a child, who is defined by the Act as a person who, in the opinion of the Court, is under the age of twelve years, is charged before the justices with any indictable offence other than homicide, they may, if the parent or guardian of the child so charged, when informed by them of his right to have the child tried by a jury, does not object to the child being dealt with summarily, deal summarily with

the case, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment, but where imprisonment is awarded the term shall not in any case exceed one month, and where a fine is inflicted, the amount in any case shall not exceed 40*s*.

Whipping of Children.

In addition to or instead of any other punishment, the Justices may adjudge the child to be privately whipped with not more than six strokes of a birch rod by a constable, in the presence of another officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

Procedure.

For the purpose of proceeding with a child in this manner, the Justices must, during the hearing of the case, cause the charge to be reduced into writing, and read to the parent or guardian of the child, and then ask them whether they desire the child to be tried by a jury, and object to it being dealt with summarily. This does not interfere with the power of the Justices to send the child to a reformatory or industrial school.

The child must be above the age of seven years, and must be of sufficient capacity to commit crime.

Indictable Offences by young Persons which may be dealt with summarily.

In addition to the powers mentioned above possessed by Justices in the case of children, they have also jurisdiction given them by s. 11 (1) of the Summary Jurisdiction Act, 1879, as amended by s. 2 of the Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), to deal summarily with any indictable offence other than homicide committed by young persons, who are defined by s. 49 of the Act as persons who, in the opinion of the Court before whom they are brought, are of the age of twelve years and under the age of sixteen years.

Where a young person is charged before a Court of Summary Jurisdiction with any of these offences the Court, if they think it expedient, having regard to the character and antecedents of the person charged, the nature of the offence and all the circumstances of the case, and if the young person, when informed by the Court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and may inflict a fine not exceeding 10*l.*, or may pass a sentence of

imprisonment with or without hard labour for any term not exceeding three months.

Whipping of young Persons.

If the young person is a male, and, in the opinion of the Court, under fourteen years of age, the Court may, if they think it expedient, either in substitution for, or in addition to, any other punishment under the Act, adjudge him to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable in the presence of a superior officer, and of his parent or guardian, if he wishes to be present. The Court has also power to send the young person to a reformatory or industrial school.

Indictable Offences by Adults which may be dealt with summarily.

The Justices can also deal summarily under the Summary Jurisdiction Acts, 1879 and 1899, with persons who are adults charged with certain indictable offences, when the person pleads guilty to the offence with which he is charged. The sentence in such a case must not exceed six months' hard labour.

The offences in which Justices are given jurisdiction are:

(1.) Simple larceny; offences declared by any Act for the time being in force to be punishable as simple larceny; larceny from or stealing from the person; larceny as a clerk or servant; and any aiding, abetting, counselling, or procuring the commission of or any attempt to commit any of such offences;

(2.) Embezzlement by a clerk or servant;

(3.) Receiving stolen goods;

(4.) Obtaining or attempting to obtain by false pretences any chattel, money, or valuable security;

(5.) Setting fire to any wood, coppice, or plantation, or to any heath, gorse, furze, or fern.

In all the above cases where the value of the property in question does not exceed 40s., Justices have power by s. 12 of the Summary Jurisdiction Act, 1879, and s. 1 of the Summary Jurisdiction Act, 1899, to deal with adults summarily with their own consent even though they do not plead guilty; but before so dealing with them they must be asked whether they desire to be so dealt with or whether they desire to go for trial. In such a case the

punishment must not exceed three months' hard labour or a fine not exceeding 20*l.*

Whenever the Court proposes to deal summarily under the Summary Jurisdiction Act, 1899, with a charge of obtaining any chattel, money, or valuable security by false pretences, the Court must, after the charge has been reduced into writing and read to the person charged, state in effect that a false pretence means a false representation by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence, and may add any such further explanation as it may deem suitable to the circumstances.

Committal for Trial.

When any person is before a Court of Summary Jurisdiction either on summons or apprehended on a warrant charged with an indictable offence triable at Quarter Sessions, the person so charged may be committed to take his trial at the next practicable Court of Quarter Sessions having jurisdiction to try such person for such offence, or to the next assizes. It has been frequently pointed out by Judges on circuit that it is preferable that all cases triable at Quarter Sessions should be sent there.

There are certain offences which Quarter Sessions have no jurisdiction over, a full list of which is given hereafter in the chapter on Quarter Sessions, and there is no alternative but to send these offences to the next assizes.

Notice to the Governor of the Gaol.

By s. 2 of the Assizes Relief Act, 1889, every Justice by whom a person is committed to await his trial for any offence triable at Quarter Sessions must by notice in writing inform the governor of the gaol whether the persons bound over to prosecute and give evidence at the trial are bound over to attend at a Court of Quarter Sessions, or at an Assize Court, and the Court making such order for the trial of a prisoner at an assize court, shall cause notice in writing of the order to be given to the governor of the gaol in which the prisoner is confined.

Apprehension of Persons charged with Offences on the High Seas.

Justices have power to issue a warrant for the apprehension of any person who is charged with having committed, or suspected of having committed, any indictable offence committed on the high seas, or in any creek, haven, or harbour, or

other place in which the Admiralty of England have or claim to have, jurisdiction.

Compulsory issue of Warrant by Justices in certain cases.

Where an indictment has been found against any person, upon the production of a certificate certifying that such indictment has been found to the Justices of the Peace for the county in which the offence shall, in such indictment, be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or suspected to reside or be, they are required to issue their warrant to apprehend such person, and upon proof that he is the person mentioned in the indictment, shall, without further inquiry or examination, commit him for trial.

Indorsement of Warrants and Procedure thereon.

Where the Justices have issued a warrant for the apprehension of a person, and that person has escaped from the jurisdiction of the Justices so issuing the warrant, the Justices of the county or place into which he has escaped, or where he is suspected of being, may, upon proof alone being made upon oath of the handwriting of the Justice

issuing such warrant, make an indorsement which shall be sufficient authority to apprehend such person, and take him before the Justices who first issued the warrant, or before some other Justices of the same county or place.

If the prosecutor, or any of the witnesses on the part of the prosecution, shall be in the county or place where such person shall have been so apprehended, the Justices for the same county or place may take the examinations of the prosecutor and witnesses, and may commit him to the prison for the county or place where the offence is alleged to have been committed, and shall bind over the prosecutor and witnesses to appear and give evidence against him. But if such evidence, in the opinion of the Justices, is insufficient to put the person so apprehended upon his trial for such offence, they shall then bind over the witnesses who have been examined by recognizance and order such person accused to be taken before the Justices having jurisdiction over the county or place where the offence is alleged to have been committed.

CHAPTER IV.

QUARTER SESSIONS.

Origin of Quarter Sessions.

From almost the earliest period of their existence it has been the right, and the duty, of Justices to sit in Quarter Sessions, so-called because they are held once in each quarter of the year, and the holding of this quarterly Court appears to have been the most onerous duty which the Justices had to discharge. The first of the Quarter Sessions, the date of which it was thought right to definitely determine by statute, were those held at Michaelmas, for we find it enacted by 25 Edw. 3, st. 1, c. 7, that the Michaelmas sessions are to be held at the Feast of St. Michael, and by 36 Edw. 3, c. 12, Justices are given the option of holding them within eight days of St. Michael's Feast; but it is not until a few years later that we find the principle of Quarter Sessions firmly established by 12 Ric. 2, c. 10, which enacts that Justices are to keep their sessions in every quarter of the year at the least "upon pain to be punished according to the Discretion of the

King's Council, at the Suit of every Man that will complain." In 1414 the times for the holding of the Quarter Sessions enjoined on the Justices twenty-six years before were definitely fixed by 2 Hen. 5, st. 1, c. 2, it being enacted by that statute that Justices should "make" their sessions four times "by the year," in the first week after the Feast of St. Michael, the Epiphany, the "Clause of Easter," and the Translation of St. Thomas the Martyr, "and more often if need be," and these times are practically those at which Quarter Sessions are held at the present day.

Times at which Quarter Sessions are now held.

By 54 Geo. 3, c. 84, it was provided that the Michaelmas sessions were to be held in future in the first week after the eleventh day of October, and by 11 Geo. 4 and 1 Will. 4, c. 70, this provision was re-enacted, it being at the same time provided that the other Quarter Sessions of the year should be held in the first week after December 28th, March 31st, and June 24th respectively; and it is under this enactment and at these times that Quarter Sessions are now held.

Alteration of Dates in certain Cases.

In 1894 it was deemed desirable, in order to prevent Quarter Sessions from interfering with

assizes, to give to Justices assembled in general Quarter Sessions, or at an adjourned or special meeting thereof, the power of fixing or altering the time for holding the next general Quarter Sessions, and this was accordingly done by 57 & 58 Vict. c. 6, this statute giving them the option of holding the sessions at any date not earlier than fourteen days before or later than fourteen days after the week in which the sessions would otherwise have been held; and also empowering them to hold a special meeting if necessary for the purpose of fixing or altering the date of the next general Quarter Sessions.

Definition of "Court of Quarter Sessions."

The expression "Court of Quarter Sessions" is defined by 52 & 53 Vict. c. 63, s. 13, as the Justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or Quarter Sessions assembled, and includes the Court of the Recorder of a municipal borough having a separate Court of Quarter Sessions.

Power to constitute a Second Court.

Until the year 1819 Justices in Quarter Sessions had no power to hold more than one Court at the same time, but were obliged to transact all their

business in one Court only, and were not allowed to lighten their labours by dividing their business and sending some of it to a second Court. In that year, however, in view of the great length of time to which the sessions extended, an Act, 59 Geo. 3, c. 28, was passed enacting that, if it appeared likely to the Justices assembled in Quarter Sessions that the business before them would take more than three days, they should be at liberty to constitute a Second Court, which should have the same powers possessed by the First Court, and to which business might be relegated. In 1842 this principle was recognized and extended by 5 & 6 Vict. c. 38, s. 4 of which statute gives a general power to Justices in Quarter Sessions to divide their Court for the purposes of expediting the transaction of business.

Trial of Prisoners.

The principal business which falls to the lot of Justices in Quarter Sessions assembled is the trial of prisoners. Until almost the middle of the present century the jurisdiction of Justices in this respect was practically unlimited, for by the terms of their Commission they were authorised to hear and determine felonies and trespasses and to inflict punishment for them, but in 1842 a most important statute was enacted to define the jurisdiction of Justices

in general and Quarter Sessions, and it is by virtue of this Act (5 & 6 Vict. c. 38), the provisions of which have been since but slightly modified, that Justices are now debarred from trying those cases which are at the present time not cognizable by Quarter Sessions.

Cases in which Quarter Sessions have no Jurisdiction.

This statute provides that Justices are not to try persons for treason, murder, or capital felony, or for a felony punishable on first conviction by transportation for life, for which latter punishment penal servitude has since, by 20 & 21 Vict. c. 3, s. 2, been substituted. The other offences which are by the statute placed outside the jurisdiction of Justices are:

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person or government, or against either House of Parliament.
3. Offences subject to the penalties of præmunire.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury or subornation of perjury.
7. Making, or suborning any other person to make, a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanor.

8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.
10. Bigamy and offences against the laws relating to marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
14. Bribery.
15. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such Justices, or, in the case of a borough, Recorder, respectively have or has jurisdiction to try when committed by one person.
16. Stealing or fraudulently taking, or injuring or destroying, records or documents belonging to any court of law or equity, or relating to any proceeding therein.
17. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments.

The Act also provided that offences against any provision of the laws relating to bankrupts and insolvents should not be triable at Quarter Sessions, but the sub-section enacting this was repealed by the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 20, which also expressly enacted that the offences created by that Act should be within the jurisdiction of Quarter Sessions.

At the date of the passing of the Act of 1842, the Central Criminal Court had been established by 4 & 5 Will. 4, c. 36, by which Act Justices for London and Middlesex, and the parts of Essex, Kent, and Surrey placed thereby within the jurisdiction of the Central Criminal Court, were prohibited from trying a variety of cases relegated to the new Court, many of which it was not thought necessary to include in the prohibited list of the Act of 1842, and accordingly, to prevent any misconception by the Justices of London as to their duties, it was carefully laid down in the latter Act that nothing therein should be construed as giving these Justices jurisdiction in the matters prohibited in the former Act, but by 14 & 15 Vict. c. 55, s. 13, the Justices of London were placed on the same footing as their colleagues in the country, they being given by this section jurisdiction in all matters not prohibited by the Act of 1842.

On the passing of the Larceny Act of 1861 (24 & 25 Vict. c. 96), Justices in Quarter Sessions were

prohibited by s. 87, from trying any of the offences created by ss. 75—86 of the Act, which comprise the following :

1. Embezzlement of money or fraudulent sale of securities or property entrusted to him by a banker, merchant, broker, attorney, or agent.
2. Fraudulent sale by persons under a power of attorney.
3. Obtaining advances on the property of his principal by a factor or agent.
4. Fraudulent disposal of property by a trustee.
5. Fraudulent appropriation of property, or fraudulent destruction of books, by a director, member, or public officer of a body corporate or public company.
6. Fraudulent keeping of accounts and fraudulent publication of statements by a director, public officer, or manager of a body corporate or public company.

A similar provision is to be found in 37 & 38 Vict. c. 36, s. 3 of which provides that no offence against that Act, which prohibits personation in order to obtain property, shall be triable at Quarter Sessions.

Removal to Assizes of Indictments found at Quarter Sessions, but not triable there.

If it should happen that indictments are found at Quarter Sessions for offences not cognizable there, their removal to assizes is provided for by the Act of 1842.

Jurisdiction given to Quarter Session in Burglary and Cases under the Public Bodies Corrupt Practices Act, 1889.

The offences tabulated above are those not triable at Quarter Sessions, but there is one exception to that class of cases, punishable on first conviction by penal servitude for life, which is created by the Burglary Act (59 & 60 Vict. c. 57), by which statute jurisdiction is given to Quarter Sessions to try cases of burglary; and in the case of the new offences, created by the Public Bodies Corrupt Practices Act, 1889, jurisdiction is given by s. 6 of the Act (52 & 53 Vict. c. 69), to Justices in Quarter Sessions.

Hearing of Appeals.

Next, or perhaps it may be said equal, in importance to the trial of prisoners, may well be placed the second of the three divisions into which the duties

of Justices in Quarter Sessions may be separated, the Hearing of Appeals. Unlike the criminal jurisdiction of Justices, which is theirs by virtue of their Commission and the common law, the appellate jurisdiction which they now possess in a vast variety of cases, extending in fact, not only to every decision of any importance in the petty sessional or magisterial courts, but also to a large number of orders and adjudications made by local bodies, is exclusively founded on statute, and can only be exercised by them strictly in accordance with the terms of the various Acts by which this jurisdiction is created.

Appeals under the Summary Jurisdiction Acts.

Undoubtedly the Act under the provisions of which the majority of appeals come before the Quarter Sessions, is the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). This Act, by s. 19, gives to every person adjudged, in pursuance of any Act, by a conviction or order of a Court of Summary Jurisdiction to be imprisoned without the option of a fine, who is not otherwise authorised to appeal to a Court of general or Quarter Sessions, and did not plead guilty or admit the truth of the information or complaint, the right of such appeal against the conviction or order in question; and ss. 31 and 32 provide for the procedure on such appeal.

Definition of "Court of Summary Jurisdiction."

The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43, s. 6), applied these provisions of the Act of 1879 to appeals authorised under prior Acts, from the conviction or order of a Court of Summary Jurisdiction, made in pursuance of the Summary Jurisdiction Acts; and s. 13 (11) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), repealing, but virtually re-enacting, s. 7 of the Act of 1884, defined the meaning of "Court of Summary Jurisdiction" as "any Justice or Justices of the Peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law."

For some time this definition was thought to include Justices wherever or in whatever way acting (see *R.* v. *Glamorganshire JJ.*, [1892] 1 Q. B. 621), but it was finally decided, in *Boulter* v. *Kent JJ.*, (H. L.) App. Cas. (1897) 556, that it ought to be construed as meaning no more than that every Justice is a Court of Summary Jurisdiction within the meaning of the Act of 1879, or any other law relating to summary jurisdiction, in all matters

pertaining to the exercise of summary jurisdiction by magistrates, however he may have derived his authority to exercise that jurisdiction. The result of this decision is that appeals from Justices in other matters, that is, in matters which do not pertain to the exercise of summary jurisdiction, as, for instance, licensing, must be conducted not in accordance with the provisions of the Summary Jurisdiction Act, 1879, but with the provisions enacted by the statute giving the right of appeal, and that therefore the provisions of the Summary Jurisdiction Act as to costs do not apply.

Notice of Appeal, etc.

By s. 31 of this Act, any person authorised to appeal from the conviction or order of a Court of Summary Jurisdiction to a Court of general or Quarter Sessions, in which category is included a person who has been summarily sentenced by a metropolitan police magistrate to a fine of more than three pounds (2 & 3 Vict. c. 71, s. 50), must appeal to the prescribed Court, or, if no Court is prescribed, to the next practicable Court of general or Quarter Sessions having jurisdiction, and holden not less than fifteen days after the date of the conviction or order appealed from. He must within seven days, if no other time is prescribed, give notice of appeal, which may be

sent by registered post, to the other party, and to the clerk of the Summary Jurisdiction Court, setting forth in writing the general grounds of his appeal; and must also within three days of giving notice of appeal, if no other time is prescribed, enter into a recognizance to prosecute the appeal, and abide by the result, or give security in lieu of a recognizance. If the appellant is in custody, he may, if the Court thinks fit, on entering into the recognizance, be released from custody.

Procedure on Appeal.

The Court of general or Quarter Sessions may, if they think fit, adjourn the hearing of the appeal. Upon the hearing, they may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or may remit the matter, with their opinion thereon, to a Court of Summary Jurisdiction for the same county, borough, or place, as the Court by whom the conviction or order appealed against was made, or may make such other order in the matter as they think just, and may by such order exercise any power which the Court of Summary Jurisdiction might have exercised. The Court may also make such order as to costs to be paid by either party as the Court may think just. It should also be stated that an appeal to Quarter Sessions is in the nature of a

re-hearing, that fresh evidence may be called on either side, and that the appellant in this respect is only bound by his grounds of appeal.

Appeals in certain cases to which the Summary Jurisdiction Acts are applied.

By s. 53 of the Act of 1879, the Summary Jurisdiction Acts are applied to offences relating to the post office, Inland Revenue and Customs, which were formerly excepted by the several Acts creating them, and s. 54 of the Act applies it to bastardy cases, thereby giving an alternative procedure in these cases, as the original procedure was regulated by the Act, 7 & 8 Vict. c. 101, from which the right of appeal was derived. This alternative procedure existed until the Summary Jurisdiction Act, 1884, was passed, the effect of which was, as decided in *R.* v. *Shingler*, 17 Q. B. D. 49, to apply to appeals from bastardy orders the provisions of the Summary Jurisdiction Act, 1879.

There is yet another case in which the appeal to Quarter Sessions must be brought subject to these provisions; it is that of an appeal against the order of the local authority under Part II. of the Housing of the Working Classes Act, 1890, which deals with unhealthy dwelling-houses. Section 35 of the Act (53 & 54 Vict. c. 70) enacts that s. 31 of the

Summary Jurisdiction Act, 1879, shall apply to such appeals, with the proviso that notice of appeal may be given within one month after notice of the order of the local authority has been served on the appellant, and that the Court shall, at the request of either party, state the facts specially for the determination of a superior Court, in which case the proceedings may be removed into that Court.

Licensing Appeals.

Next in number to the appeals which come before Justices in Quarter Sessions under the Summary Jurisdiction Acts, are probably those which lie by virtue of the Licensing Act, the procedure on which is determined by these Acts.

Certain Licensing Appeals to which the Summary Jurisdiction Acts apply.

First, however, it should be clearly stated that a certain class of these appeals, namely, those allowed by the Licensing Act, 1872, 35 & 36 Vict. c. 94, s. 52, have their procedure regulated by the Summary Jurisdiction Acts, as they are from an order or conviction made by a Court of Summary Jurisdiction, and not from a decision of licensing Justices. Consequently, the Court of Quarter Sessions has the same general power in these cases with regard to costs as

has been stated above, a power wider than that given to them in appeals from decisions of licensing Justices.

Appeals from Licensing Justices regulated by the Alehouse Act, 1828.

Until the decision in *Boulter* v. *Kent JJ.*, mentioned above, it was supposed that this latter class of appeals also was regulated by the Summary Jurisdiction Acts, but it was decided in that case that the provisions of the Alehouse Act, 1828, 9 Geo. 4, c. 61, applied to appeals from licensing Justices. By s. 27 of this Act, an appeal is given to Quarter Sessions from the decision of Justices under the Act, that is, as to the renewal or transfer of licenses. The right of appeal was also given by the Act in respect of the granting of new licenses, but was taken away subsequently by 35 & 36 Vict. c. 94, sched. 2.

Notice of Appeal.

The appellant must give to the Justices against whose decision he appeals, notice in writing within five days of the decision, and must also enter into a recognizance with sureties to prosecute the appeal and abide by the results.

Procedure on Appeal.

On the hearing of the appeal, if the act appealed against is the refusal to transfer a license, and the judgment of the Justices is reversed, the Court may transfer the license in the same manner as if the license had been transferred at a special session, and the judgment of the Court shall be final; if the appeal is dismissed, or the judgment appealed from affirmed, the Court must order the judgment to be carried into execution, and costs awarded to be paid, and, if necessary, must issue process for enforcing its order. On the hearing or determination of an appeal to general or Quarter Sessions, no Justice may act from whose decision the appeal is brought.

Costs.

Section 29 of the Alehouse Act, 1828, provides that, where notice of appeal has been given, and the appeal has been dismissed, or the judgment appealed against confirmed, or the appeal has been abandoned, the Court must order the appellant to pay to the Justice to whom the notice of appeal has been given, such a sum as will indemnify him from all cost and charge whatsoever to which he has been put in consequence of having been served with the notice of appeal. In default of payment, the appellant is to be committed to prison.

This section also provides that, if the judgment appealed from is reversed, the Court may, if it thinks fit, order the treasurer of the county for which the Justice whose judgment is reversed acted, to indemnify him from all cost.

The procedure in these two great classes of appeals as set forth above, is sufficient to indicate the rights and duties of Justices when exercising their appellate jurisdiction in Quarter Sessions, and it has been thought unnecessary to specify in this book the various regulations by which the right of appeal in other cases is restricted, for although the steps necessary to bring such cases to trial may differ, the procedure on trial, and the rights and duties of Justices when forming the Court, are substantially the same in all cases. In such cases as rating appeals, appeals under the Highway Acts, and many others, the discretion of Justices as to costs is very large, power being given to them to withhold or award them as may appear to them just. The judgment of a Court of Quarter Sessions is final, and is not subject to review; they may, however, if they think fit, state a case on a point of law for the opinion of a superior Court.

Miscellaneous Jurisdiction of Quarter Sessions.

Apart from their criminal and appellate jurisdiction, there are certain other miscellaneous powers

vested in Justices in Quarter Sessions, which it will be well here to enumerate. Some of these powers are exercised either by way of quasi appeal from Justices acting in sessions for special purposes, or on the requisition of a Justice or other person properly authorised, while others are powers of original jurisdiction.

Workhouses.

Of these powers, the earliest in date was given by 30 Geo. 3, c. 49, which statute authorises Justices in Quarter Sessions to make orders on complaints as to the conduct of workhouses made to them by a Justice, or a person qualified as provided in the Act duly authorised by such Justice.

Recognizances.

General powers as to recognizances sent up to Quarter Sessions, their forfeiture and discharge, are given to Justices by 3 Geo. 4, c. 46, who of course, by the terms of their Commission, are authorised to order persons to enter into recognizances if they deem it advisable.

Creation of new Petty Sessional Division.

On the representation of Justices that it is desirable, in the interests of justice and for the convenience of persons resident in the neighbourhood,

to create a new petty sessional division, the Court of Quarter Sessions is empowered by 9 Geo. 4, c. 43, to order that this shall be done, and to define the limits of such new division.

Highways.

Under the Highway Acts of 1835 and 1864, Quarter Sessions have wide powers as to the stopping, diversion, widening, and repairing of highways. By the former Act (5 & 6 Will. 4, c. 50), it is provided that after two Justices have certified, as they are authorised to do by the Act, that the stopping or diversion of a highway is desirable, their certificate shall be sent up to Quarter Sessions and there read. If interested parties wish to appeal from the Justices' decision, they are at liberty to do so, and their appeal is then heard by the Court. Should, however, there be no appeal, or should the appeal be dismissed, the certificate of the Justices is then enrolled, and the order for the stopping or diversion of the highway made.

This Act, by s. 82, also gives power to Justices in Petty Sessions to order the widening of a highway, if they deem it necessary, and in default of an agreement being come to between the parties as to compensation for land taken for that purpose, the Court of Quarter Sessions is empowered to

empanel a jury by whom the amount of such compensation shall be settled.

The Highway Act of 1864, 27 & 28 Vict. c. 101, gives power to Quarter Sessions by s. 21, to order that a road, originally an old highway, which has been, but is not now, repairable by the parish, shall be again repairable by the parish.

Gas rate and Water rate.

In 1847, Justices in Quarter Sessions were given power by two statutes, the Gasworks Clauses Act, and the Waterworks Clauses Act, 10 & 11 Vict. cc. 15 and 17 respectively, on application being made to them, to order an enquiry into the business of any gasworks or waterworks company with reference to which complaint was made, and after such enquiry to adjust the gas rate and water rate, as the case might be, in accordance with the scale enacted by law.

Parish Constables.

By 35 & 36 Vict. c. 92, which provided that, in view of the establishment of an efficient police force having rendered the general appointment of parish constables unnecessary, no such constable should be in future appointed save as provided in the Act, power was reserved to Quarter Sessions to appoint constables for parishes within their jurisdiction, if they

should deem it necessary for the preservation of the peace or the proper discharge of public business.

Prison Visiting Committee.

The Prison Act, 1877, 40 & 41 Vict. c. 21, by s. 13, provides for the annual appointment of a visiting committee to consist of Justices of the Peace. This committee is to be appointed by the Justices in General or Quarter Sessions in counties and in special sessions in boroughs, and must conform to the rules made by the Secretary of State, and for the time being in force, with respect to the duties of a visiting committee, but nothing in the Act or such rules shall restrict any member of a visiting committee for any prison from visiting the prison at any time, and any such member shall at all times have free access to every part of the prison and to every prisoner therein.

Justices in Quarter Sessions no longer the "Local Authority" under the Habitual Drunkards Act.

Until 1898, Justices in Quarter Sessions were the "local authority" for the purpose of licensing retreats under the Habitual Drunkards Act, 1879, but by the Inebriates Act, 1898 (61 & 62 Vict. c. 60, s. 13), the borough council in boroughs and the

county councils in counties are respectively substituted. The Local Government Act, 1888 (51 & 52 Vict. c. 41), which established county councils, took away from Quarter Sessions practically the whole of their administrative business, and the few powers still possessed by them as mentioned above are but the merest remnant of the vast business which was, up to that time, entrusted to their care.

Control of the Police by a Standing Joint Committee of the Quarter Sessions and the County Council.

By s. 9 of the Act, however, the control of the county police was partially reserved to them. This section enacts that the powers, duties and liabilities of Quarter Sessions and of Justices out of Sessions with respect to the county police shall vest in the Quarter Sessions and the County Council jointly, to be exercised and discharged through a standing joint committee of the Quarter Sessions and the County Council. This committee, it is enacted by s. 30 (1), shall consist of an equal number of Justices appointed by the Quarter Sessions, and of members of the County Council appointed by the Council, the chairman being elected by the committee by vote, or in the case of an equality of votes, by lot.

The "Judicial Authority" under the Lunacy Act to be appointed by Quarter Sessions.

By s. 86 (2) of the Local Government Act, 1888, the jurisdiction of Quarter Sessions and Justices in relation to the removal, reception, or detention of lunatics was expressly reserved, but this section was repealed by the Lunacy Act, 1890 (53 Vict. c. 5), which, however, by s. 9, enacted that the powers of the "Judicial Authority" under the Act shall be exercised by a Justice of the Peace specially appointed. Section 10 provides for the annual appointment by the Justices of every County and Quarter Sessions Borough, out of their own body, of as many fit and proper persons as they may deem necessary to exercise the powers conferred by the Act upon the "Judicial Authority," the annual appointments to be made by Justices of a county at their Michaelmas Quarter Sessions, and by Justices of a borough at special sessions to be held in the month of October. The powers exercisable by the "Judicial Authority" under the Act relate to the reception and detention of lunatics not being paupers or lunatics so found by inquisition.

Visitors of Lunatic Asylums.

By s. 177 of the Act, the Justices of every County and Quarter Sessions Borough not within the

immediate jurisdiction of the Commissioners in Lunacy, are required to appoint annually three or more Justices, and also one medical practitioner, or more, to act as visitors of houses licensed for the reception of lunatics, the appointments to be made at the Michaelmas Sessions in the case of counties and at a special sessions in October in the case of boroughs.

One more instance of what may be termed the miscellaneous jurisdiction of Quarter Sessions is contained in the Summary Jurisdiction (Married Women) Act, 1895.

Jurisdiction of Quarter Sessions under the Summary Jurisdiction (Married Women) Act, 1895.

This statute (58 & 59 Vict. c. 39), by s. 4 empowers a woman to apply for an order under the Act, where the ground of the application is the conviction of her husband upon indictment, to the Court before which he was so convicted, which Court thereupon becomes a Court of Summary Jurisdiction for the purposes of the section, and has power without a jury to hear the application and to make the order applied for.

Jurisdiction of Quarter Sessions under the Inebriates Act, 1898.

Finally by the Inebriates Act, 1898, mentioned above, a Court before which a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, on being satisfied from the evidence that the offence was committed under the influence of drink, or that drunkenness was a contributory cause of the offence, and when the offender admits that he is, or is found by the jury to be, a habitual drunkard, may in addition to, or in substitution for, any other sentence, order that he be detained for a term not exceeding three years in a State inebriate reformatory or in any certified inebriate reformatory, the managers of which are willing to receive him.

It is also provided by s. 2 of the Act that any person who commits any of certain offences mentioned in the First Schedule of the Act, and who, within the twelve months preceding the date of the commission of the offence, has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily on summary conviction, to be detained for a term not exceeding

three years in any certified inebriate reformatory the managers of which are willing to receive him.

By this Act the rights of Justices, both in Quarter and Petty Sessions, when dealing with inebriates are, of course, greatly extended.

The provisions of the Act will be found fully dealt with in a later chapter.

CHAPTER V.

LICENSING.

The Alehouse Act, 1828.

In the year 1828 most important changes in the licensing laws were introduced by 9 Geo. 4, c. 61, the Alehouse Act, 1828.

General Annual Licensing Meeting.

This Act provides for the annual holding throughout England of a special session of the Justices of the Peace, to be called the General Annual Licensing Meeting, for the purpose of granting licenses to persons keeping inns, alehouses, and victualling houses to sell excisable liquors by retail to be consumed on the premises.

Date of General Annual Licensing Meeting.

The meetings are to be held in Middlesex and Surrey within the first ten days of March, and in other counties between August 20th and September 14th, their date and place being fixed at a petty

session held at least twenty-one days before. The Justices may, if necessary, adjourn the general annual licensing meeting for any time exceeding five days provided that the adjourned meeting is held in Middlesex and Surrey in March and in other counties in August or September.

Special Sessions for Transfer of Licenses.

The Justices at the general annual licensing meeting are required to appoint not less than four nor more than eight special sessions, to be held in the division during the ensuing year, at as near as may be equal intervals, for the transfer of licenses under any of the following circumstances:

Circumstances under which Licenses may be transferred.

(1) If any person duly licensed under the Act (before the expiration of his license) dies or is by sickness or other infirmity rendered incapable of keeping an inn, or becomes bankrupt;

(2) If any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, removes from or yields up the possession of the house specified in the license;

(3) If the occupier of any such house, being about to quit the same, has wilfully omitted or has neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a license to continue to sell excisable liquors by retail, to be drunk or consumed in such house ;

(4) If any house being kept as an inn by any person duly licensed as aforesaid is, or is about to be, pulled down or occupied under the provisions of any Act for the improvement of the highways or for any other purpose ;

Or is, by fire, tempest or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn.

Persons to whom the Transfer may be made.

In any one of the above-mentioned cases, and in such cases only, it is lawful for Justices assembled in special sessions

To grant to the heirs, executors, or administrators of the person so dying,

Or to the assigns of such person becoming incapable of keeping an inn ;

Or to the assignee or assignees of such bankrupt;

Or to any new tenant or occupier of any house having so become unoccupied;

Or to any person to whom such heirs, executors, administrators, or assigns have by sale or otherwise *bonâ fide* conveyed or otherwise made over his or their interest in the occupation and keeping of such house,

A license to sell excisable liquors by retail, to be drunk or consumed in such house or the premises thereunto belonging;

Or to grant to the person whose house has as aforesaid been, or is about to be, pulled down or occupied for the improvement of the highways or for any other public purpose, or has become unfit for the reception of travellers, or for the other legal purposes of an inn, and who opens and keeps as an inn some other fit and convenient house,

A license to sell excisable liquors by retail, to be drunk or consumed therein.

Duration of License so transferred.

Any license so granted is only to continue in force from the day on which it is granted till the fifth day

of April or the tenth day of October then next ensuing, as the case may be.

Transfer of License in cases of conviction of Licensee.

In addition to the cases enumerated above, it is provided by the Licensing Act, 1874, s. 15, that where any licensed person is convicted for the first time of any one of the following offences:

(1) Making an internal communication between his licensed premises and any unlicensed premises;

(2) Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;

(3) Selling spirits without a spirit license;

(4) Any felony,

and in consequence either becomes personally disqualified or has his license forfeited, there may be made by or on behalf of the owner of the premises an application to a Court of Summary Jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a license in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act,

1828, with respect to the grant of a temporary authority and to the grant of licenses at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.

Justices when sitting in special sessions have the same discretion with regard to the transfer of licenses as they have with regard to the granting of new and renewal of old licenses, the nature of which will be found discussed at the close of this chapter, as laid down in the case of *Sharp* v. *Wakefield*.

Notice by Applicant for a New License or for a Transfer.

Any person intending to apply for a new license or for the transfer of a license is required by the Licensing Act, 1872, s. 40, to publish notice of his application, but in the case of an application for the renewal of a license no notice is necessary, nor is the applicant obliged to attend in person unless he is required to do so by the licensing Justices for some special cause personal to himself.

Attendance of Applicant.

It is also provided (Alehouse Act, 1828, s. 12) that if any person intending to apply at the general

annual licensing meeting, or at any adjournment thereof, or at any special session, for any license to be granted under the authority of the Act or for the transfer of any such license, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the Justices there assembled to grant or transfer such license to such person so hindered from attending, and to deliver the same to any person then present who shall be duly authorised by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such Justices, who are empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause. If neither the applicant nor a messenger authorised by him appears, the Justices are not obliged to renew the license.

Procedure at General Annual Licensing Meeting and Special Sessions.

All questions arising at either the general annual licensing meeting or at the special transfer sessions, touching the granting, withholding, or transferring of any license, or the fitness of the person applying for the license or of the house intended to be kept, are to be determined by the majority of Justices, and

every license granted must be signed by the majority of the Justices present.

Disqualification of certain Justices from acting under the Licensing Acts with certain exceptions.

In the Act of 1828 there was a section inserted, expressly disqualifying certain Justices from acting at any licensing meeting, but this section was repealed by the Licensing Act, 1872, which substituted another section prohibiting certain Justices from taking part in these proceedings.

This section (s. 60) enacts that no Justice shall act for any purpose under the Act, or under any of the Intoxicating Liquor Licensing Acts, except in cases where the offence charged is that of being found drunk in any highway or other public place, whether a building or not, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine, or of being drunk when in possession of loaded firearms, who is or is in partnership with or holds any share in any company, which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district, or in the district or districts adjoining to that in which such Justice

usually acts; and no Justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Acts, in respect of any premises in the profits of which such Justice is interested, or of which he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent.

Penalty for Improperly Acting.

Any disqualified Justice acting is liable to a penalty of 100*l.* for each offence, but shall not be liable to a penalty for more than one offence committed by him before the institution of proceedings for the recovery of the penalty. A Justice is not disqualified if his interest is legal only and not beneficial, nor is the act of a disqualified Justice invalid by reason only of his disqualification.

Discretion of Justices in Licensing Sessions.

Justices when sitting in licensing sessions are acting judicially, and although in most cases they have an unlimited discretion, they are obliged to exercise it in a reasonable and not in an arbitrary manner. When acting under the Alehouse Act, 1828, and the Licensing Act, 1872, Justices have an unlimited discretion to grant, refuse, or renew a license, and for the purposes of their decision may,

as is laid down in *Sharp* v. *Wakefield*, [1891] App. Cas. 173, consider the wants of the neighbourhood with reference both to its population, means of inspection by the proper authorities, and so forth.

Limitation on Justices' Discretion in Certain Cases.

In the case, however, of certain beer, cider, wine and spirit licenses, the discretion of Justices is limited by the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27). Section 8 of this Act applies the provisions of the Alehouse Act, 1828, to the grant of certificates under the Act, but enacts that no application for a certificate under the Act in respect of a license to sell by retail cider or wine not to be consumed on the premises shall be refused except upon one or more of the following grounds :—

(1) That the applicant has failed to produce satisfactory evidence of good character.

(2) That the house or shop in respect of which a license is sought, or any adjacent house or shop owned or occupied by the person applying for a license, is of a disorderly character or frequented by thieves, prostitutes, or persons of bad character.

(3) That the applicant, having previously held a license for the sale of wine, spirits, beer,

or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such license, or from selling any of the said articles.

(4) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required.

Where the ground of refusal is the disqualification of the house, the Justices must specify in writing the grounds of their decision.

This section is applied by s. 69 of the Licensing Act, 1872, to licenses for the sale of liqueurs or spirits by retail not to be consumed on the premises.

Section 19 of the Wine and Beerhouse Act, 1869, provides that, in the case of existing licenses with respect to any house or shop for the sale by retail therein of beer, cider, and wine, to be consumed on the premises it shall not be lawful for the Justices to refuse an application for a certificate for the sale of beer, cider, or wine to be consumed on the premises, except upon one or more of the four grounds mentioned in s. 8. Apart from these exceptions Justices have an unlimited discretion when dealing with applications for licenses, for which they are indebted to

the decision of the House of Lords in *Sharp* v. *Wakefield*, [1891] App. Cas. 173.

The law as laid down in Sharp v. *Wakefield*, [1891] *App. Cas.* 173.

In that case an application for the renewal of a license for the sale of intoxicating liquors under the Licensing Acts, 1828, 1872, and 1874 was refused by the Licensing Justices on the ground of the remoteness of the house in question from police supervision, and the character and necessities of the neighbourhood, and it was decided by the House of Lords that they were entitled in their discretion to do so. On the part of the applicant it was contended that the Justices were not by law entitled to enquire into the character and wants of the neighbourhood or to refuse a grant by way of renewal upon such grounds, and that, on a renewal, as distinguished from an original grant, of a license, the only question for the Justices was the fitness of the person, and perhaps of the premises.

Justices have the same discretion in the case of a Renewal as in that of a New License.

This contention was, however, over-ruled by the House of Lords, Lord HALSBURY, L.C., saying that the grant of a license was stated by the governing

statute to be expressly within the discretion of the Magistrates, and that there could be no possible reason for limiting their discretion to the first grant of the license. But though Justices, when exercising their discretion in licensing matters, are practically supreme, it must be borne in mind that their discretion must be exercised according to the rules of reason and justice, not according to private opinion; according to law, and not humour.

Discretion not arbitrary.

It is to be, as Lord HALSBURY puts it, "not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man, competent to the discharge of his office, ought to confine himself." If Justices refuse to enforce a law, because they disapprove of it, the Court will compel them to enforce it, notwithstanding that discretion has been given them by the statute in question, and even where Justices were authorised to alter the hours for the sale of intoxicating liquors in any particular district, it was held that, though this was a general discretion given to them, they had no right, by virtue of a general resolution, to alter the time in every case.

Mode in which the consideration of an Application for a Renewal should be approached.

In cases of renewal, it was pointed out by Lord HALSBURY that Justices would probably, in the exercise of their discretion, consider such an application in a somewhat different manner to that in which they would approach the consideration of an application for a new license, as a license having been granted the year before, in default of any change in the conditions having taken place, the circumstances under which it was granted would remain the same, and having been before of such a character as to warrant the granting of the license, would probably be held such as to warrant its renewal. Should there, however, appear to the Justices to have been any change in the surrounding circumstances, they are entitled in the exercise of the complete discretion vested in them, as decided in the above case, to refuse a renewal of the license in the same way as they are entitled to refuse the grant of a license on an original application.

CHAPTER VI.

THE CRIMINAL EVIDENCE ACT, 1898.

Anomalous and uncertain state of the Law before 1898.

Before the passing of the Criminal Evidence Act of 1898, there was a good deal of discussion and difference of opinion among the Judges and chairmen of Quarter Sessions, whether counsel were entitled to comment to the jury upon the absence of the accused person from the witness-box, in those cases where the prisoner was entitled by statute to give evidence on his own behalf. The late Recorder of London, Sir Thomas Chambers, never allowed counsel to make such comments, his reason being that when the Criminal Law Amendment Act was being debated in the House of Commons, it was understood that no such comment should be made, and that it was intended that a clause to such effect should be inserted in the Act. No such clause, however, appeared, and Judges held different opinions. Also, in cases where prisoners were charged with offences under statutes giving them the opportunity

of giving evidence, the question arose whether counsel for the prosecution could cross-examine them on previous convictions. This again created a difference of opinion, and although there was no authoritative rule established, the course generally adopted was to cross-examine only as to a previous conviction, if it was a conviction for a crime of a similar nature to the one for which they were then being tried.

Provisions of the Act.

These vexed questions, which arose in certain cases under the old law, have, however, been now entirely set at rest by the Criminal Evidence Act, 1898.

Accused Person a competent Witness for the Defence.

By this statute (61 & 62 Vict. c. 36), which does not apply to Ireland, it is enacted that every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

Accused not entitled to give Evidence before the Grand Jury.

In *R.* v. *Rhodes*, [1899] 1 Q. B. 77, the question was raised whether the words " at every stage of the proceedings " gave a prisoner the right to give evidence before the Grand Jury. The Court for the consideration of Crown Cases Reserved, however, decided, upholding the decision of the chairman of Quarter Sessions for the Isle of Ely, by whom the case was stated, that he had no such right, for the only right conferred on a prisoner by the Act was to give evidence for the defence, and that as the Grand Jury had nothing whatever to do with the evidence for the defence, a prisoner can not give evidence before them.

Provisos in favour of the Accused.

To s. 1 of the Act, which makes prisoners competent witnesses, are attached several provisos with the object of safeguarding their interests. The first of these provides that a person so charged shall not be called as a witness in pursuance of the Act, except upon his own application; and the second, that the failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged to give evidence, shall

not be made the subject of any comment by the prosecution.

Right of the Court to comment on the Absence of the Accused from the Witness-box.

In the case of *R.* v. *Rhodes* mentioned above, it was also decided by the Court, in this instance also upholding the chairman of Quarter Sessions, that there was nothing in the Act that took away, or even purported to take away, the right of the Court before whom a prisoner is tried, to comment on the evidence in the case, and the manner in which the case has been conducted, and that, therefore, it was a question entirely for the discretion of the Judge trying the case, whether he should comment, or refrain from doing so, on the absence of a prisoner from the witness-box.

Cases in which the Wife or Husband of the Accused may be called as a Witness, without the Accused's Consent.

The third proviso to s. 1 enacts that the wife or husband of the person charged shall not, save in certain cases, be called as a witness in pursuance of the Act, except upon the application of the person so charged. The exceptions contemplated by the proviso are where a person is charged with offences under the Vagrancy Act, 1824, 5 Geo. 4, c. 83, for

neglecting to maintain or deserting his wife and family; the Poor Law (Scotland) Act, 1845, 8 & 9 Vict. c. 83, s. 80; the Offences against the Person Act, 1861, 24 & 25 Vict. c. 100, ss. 48—55; the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, ss. 12, 16; the Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69; and the Prevention of Cruelty to Children Act, 1894, 57 & 58 Vict. c. 41. In these cases, the wife or husband of the person charged may be called as a witness either for the prosecution or defence, without the consent of the person charged, nor is anything in the Act to affect a case where the wife or husband of a person charged with an offence, may at common law be called as a witness without the consent of that person.

Examination of Witnesses under the Act.

With respect to the examination of witnesses called in pursuance of the Act, it is provided by s. 1 (*d*), that "nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage"; but by s. 1 (*e*), "a person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged."

Restriction on Cross-examination to Credit.

The most important protection extended to witnesses under the Act is contained in s. 1 (*f*), which enacts that "a person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character." To this general rule there are three exceptions, in which cases such questions as are otherwise forbidden are allowed to be put. The protection otherwise extended to the witness is withdrawn—

(1) If the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged.

An instance of this is where a prisoner is indicted for receiving stolen property, well knowing it to be stolen; in this case, by 34 & 35 Vict. c. 112 (The Prevention of Crimes Act, 1871), s. 19, when "evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or

dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen; provided that not less than seven days notice in writing shall have been given to the person accused that proof is intended to be given of such previous conviction."

The second case in which the protection is withdrawn is,—

(2) If the accused has personally or by his advocate asked questions of the witnesses for the prosecution, with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution.

This second exception would appear at first to present some difficulties, but it is submitted that in practice the Court will be able to judge without trouble, whether the defence made by the accused is of such a nature as to bring him within the class of cases contemplated by the latter part of this subsection.

The third and final case in which the protection is withdrawn is—

(3) If the accused has given evidence against any other person charged with the same offence.

Evidence to be given from the Witness-box.

Section 1 of the Act also provides in sub-s. (*g*) that "every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box, or other place from which the other witnesses give their evidence."

Unsworn Statement by the Accused, apart from the Act.

Nothing in the Act is to affect the provisions of s. 18 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), or any right of the person charged to make a statement without being sworn. The section here referred to is that which provides that, after the examination of witnesses for the prosecution, in the case of a person charged before Justices of the Peace with an indictable offence, the prisoner shall be given an opportunity, after hearing the depositions which have been sworn against him read, of saying anything he wishes in answer to the charge. Any statement that the prisoner then desires to make is taken down in writing, read over to him,

and signed by the Justice before whom it is taken. It is then transmitted with the depositions to the Court before whom the prisoner is committed for trial, and may there be given in evidence against him.

Apart from the statement authorised by the Indictable Offences Act, 1848, at the petty sessional court, the practice has grown up of allowing a prisoner, when on his trial, to make a statement from the dock in his defence, even though he be defended by counsel, and it would appear from the Act that it is not desired that this option, though not, strictly speaking, the prisoner's by right, should be taken away.

Procedure where Accused is the only Witness for the Defence.

Sections 2 and 3 of the Act prescribe rules of procedure where the only witness to the facts of the case called by the defence is the person charged. In this case s. 2 enacts that he shall be called as a witness immediately after the close of the evidence for the prosecution, and s. 3 provides, that in cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

In *R.* v. *Gardner*, [1899] 1 Q. B. 150, two points were raised in connection with the language of these two sections. The first was, whether the Criminal Evidence Act, 1898, has taken away the right of the prosecuting counsel to sum up cases where a prisoner applies to give evidence, but does not call witnesses. This right, of course, only exists where a prisoner is defended by counsel. The second point was whether, if the prosecuting counsel is entitled to sum up at the close of the prisoner's evidence, he is entitled to comment on that evidence, or whether he is required to confine his summing-up to the evidence adduced by the prosecution,

On the first of these questions it was decided by the Court for the consideration of Crown Cases Reserved, that the right of the prosecuting counsel to sum up is not taken away; and on the second question, that he is entitled to comment on all the evidence before the Court.

The rules of procedure in such a case as this, where a prisoner defended by counsel is the only witness for the defence, were clearly laid down by Lord Russell of Killowen, C.J., who held that the prisoner must be called as a witness immediately after the close of the evidence for the prosecution, and that the right of the prosecuting counsel to sum up was not extinguished, but merely postponed until after the prisoner's evidence, and that in the exercise

of that right he was at liberty to refer in his summing-up to the evidence of the prisoner.

In the case of a prisoner giving evidence together with other witnesses for the defence it is assumed that the ordinary rules of procedure would apply, and that counsel for the prosecution would have the same right of final summing-up on the whole case as he possessed before the passing of the Act.

Notice of intention to call Accused necessary in Scotland.

Section 5 of the Act provides that in Scotland the husband or wife of the person charged shall not be called for the defence unless notice is given as prescribed by the Criminal Procedure (Scotland) Act, 1887 (50 & 51 Vict. c. 35), s. 36. This section requires three days' written notice to be given by the prisoner of his intention to call fresh witnesses.

Application of the Act to all Criminal Proceedings.

By s. 6 (1) the Act is applied to all criminal proceedings, notwithstanding any enactment in force at the commencement of the Act, thus taking away the unlimited right of cross-examination, which has been referred to as existing in cases where prisoners were entitled to give evidence in their own behalf before the passing of the Act.

Non-repair of Highway.

There is, however, one case, especially excepted by this section, which nothing in the Criminal Evidence Act, 1898, is to affect, which is provided for by the Evidence Act, 1877 (40 & 41 Vict. c. 14). This statute enacts that "on the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant shall be admissible witnesses and compellable to give evidence."

Act does not apply to Courts-martial.

By s. 6 (2) it is provided that the Act shall not apply to proceedings in courts-martial unless so applied as to courts-martial under the Naval Discipline Act (29 & 30 Vict. c. 109), by general orders made in pursuance of s. 65 of that Act, which provides for the framing by the Admiralty of general orders regulating the procedure of courts-martial; and as to courts-martial under the Army Act (44 & 45 Vict. c. 58), by rules made in pursuance of s. 70 of that Act, which gives power to Her Majesty

to make rules, under the hand of a Secretary of State, in respect of, *inter alia*, the proceedings of courts-martial.

Such are the important changes which this Act has made in the law of evidence, and though it has been described by its opponents as giving a distinct inducement to every guilty prisoner to commit perjury, it must be remembered that it has at last opened the mouth of the innocent man, who is now permitted by its provisions personally to tell his own story to the jury, and to have the truth of that story tested in the most thorough way by cross-examination. At the same time, as we have seen, an innocent man, though previously convicted, can give his evidence without fear of the jury being prejudiced against him by unfair cross-examination as to his former record, and thus every opportunity is afforded to the tribunal of having before it that evidence from which it was formerly debarred—the evidence of those who are probably more familiar with the facts of the case than any of the witnesses, whose testimony under the old law was alone admissible.

CHAPTER VII.

THE INEBRIATES ACT, 1898.

The Inebriates Act, 1898.

The law with reference to the treatment of habitual drunkards has recently been considerably altered and improved by the above Act. It should particularly be borne in mind, however, that no new crimes or offences are created by the Act, but that it merely provides in place of the ordinary punishment, which falls to the lot of all offenders against the law, which was alone available in the case of crimes and offences committed by habitual drunkards when under the influence of drink, a new and extraordinary treatment particularly adapted to the moral and physical requirements of those persons to whom the Act applies and partaking of a reformatory as opposed to a penal character.

Conviction on Indictment for serious Crime.

With this object in view the Act provides in s. 1 (1) that "where a person is convicted on indictment of an offence punishable with imprisonment or

penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits that he is or is found by the jury to be a habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him."

Procedure.

In order to give the Court of Quarter Sessions, or other Court before whom the indictment may be preferred, jurisdiction under the above section, the indictment must state, after charging the offence in question, that the offender is a habitual drunkard, and the offender having been arraigned on that part of the indictment which charges the offence and having pleaded, or been found by the jury, guilty of the offence, the jury, without being again sworn, shall be charged to inquire whether he is a habitual drunkard, unless this is admitted by him. Unless, however, evidence has been given before committal that the offender is a habitual drunkard, he may not be indicted under the section unless not less than seven days' notice of the intention to charge habitual drunkenness in the indictment is given to him and

to the proper officer of the Court by which the offender is to be tried.

This section of the Act, it will be seen, deals only with those habitual drunkards who, in consequence of their habits of drunkenness, are guilty of serious crime. Before the Act came into force the only treatment which it was possible to apply to them was penal, and did not admit of any variation with a reformatory object, but now on the establishment of the State reformatories as provided by the Act, this class of criminal may be sentenced to a period of detention therein, or in some cases in county or other private reformatories properly certified, sufficiently long to punish them for their offences, although the Act provides that detention in a reformatory may be supplemental to other punishment, and, owing to the special treatment adopted, to cure them of their drunken habits.

Conviction for Petty Offences.

While, however, the treatment provided in the new inebriate reformatories will be of immense value in the cases of those habitual drunkards convicted of serious crime arising from their drunken habits, the principal benefit conferred by the Act appears to lie in the provision of s. 2, which deals with that class of petty offenders who are continually appearing before Justices, and for whom no means of compulsory reformation have hitherto existed.

This section (s. 2) enacts that "any person who commits any of the offences mentioned in the first schedule to this Act, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily on summary conviction, to be detained for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him."

Procedure.

Sub-section (2) of this section applies the Summary Jurisdiction Act, 1879, to proceedings under the section, as if the offence charged was specified in the second column of the first schedule of the Act.

Petty Offences to which the Act applies.

The offences to which this section applies are—

Being found drunk in a highway or other public place, whether a building or not, or on licensed premises (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12).

Being guilty while drunk of riotous or disorderly behaviour in a highway or other public place, whether a building or not (*ibid.*).

Being drunk while in charge, on any highway or

other public place, of any carriage, horse, cattle, or steam-engine (*ibid.*).

Being drunk when in possession of any loaded firearms (*ibid.*).

Refusing or failing when drunk to quit licensed premises when requested (*ibid.*, s. 18).

Refusing or failing when drunk to quit any premises or place licensed under the Refreshment Houses Act, 1860, when requested (Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 41).

Being found drunk in any street or public thoroughfare within the Metropolitan Police District, and being guilty while drunk of any riotous or indecent behaviour (Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 58.

Being drunk in any street, and being guilty of riotous or indecent behaviour therein (Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 29).

Being intoxicated while driving a hackney carriage (*ibid.*, s. 61).

Being drunk during employment as a driver of a hackney carriage, or as a driver or conductor of a stage carriage in the Metropolitan Police District (London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 28.

Being drunk and persisting, after being refused

admission on that account, in attempting to enter a passenger steamer (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 287).

Being drunk on board a passenger steamer, and refusing to leave such steamer when requested (*ibid.*).

Being found in a state of intoxication and incapable of taking care of himself, and not under the care or protection of some suitable person, in any street, thoroughfare or public place (Public Houses Acts Amendment (Scotland) Act, 1862 (25 & 26 Vict. c. 35), s. 23).

Being in any street drunk and incapable and not under the care and protection of some suitable person (Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 381).

Being drunk while in charge, in any street or other place, of any carriage, horse, cattle, or steam-engine, or when in possession of any loaded firearms (*ibid.*, s. 380).

Being found in any shebeen drunk (Public Houses Acts Amendment (Scotland) Act, 1862 (25 & 26 Vict. c. 35), s. 19).

Refusing or neglecting when drunk to quit any premises or place licensed under the Refreshment Houses (Ireland) Act, 1860, when requested (Refreshment Houses (Ireland) Act, 1860 (23 & 24 Vict. c. 107), s. 42).

Being drunk in any street or public thoroughfare within the Dublin police district, or being guilty while drunk, of any riotous or indecent behaviour (Dublin Police Act, 1842 (5 & 6 Vict. c. 24), s. 15).

Being found drunk in any street, square, lane, road, way, or other public thoroughfare or place (Licensing (Ireland) Act, 1836 (6 & 7 Will. 4, c. 38), s. 12).

All similar offences in local Acts.

Offender must be a Habitual Drunkard.

It should be noted that in order to sustain an indictment under s. 2 of the Act, not only is it necessary to prove the particular offence charged, and the three summary convictions, within the twelve months preceding the offence, but it also must be proved to the satisfaction of the jury, as is also the case in an indictment under s. 1, that the offender is a habitual drunkard, to do which it is assumed that some additional evidence as to frequent drunkenness besides that as to the three summary convictions, must be forthcoming.

Persons convicted under s. 2 to be treated in Certified Inebriate Reformatories only.

Attention may also be drawn to the fact that in s. 2 of the Act no mention is made of State inebriate reformatories, it being the intention of the

Legislature, as evidenced by the debates on the Bill when it was before the House of Commons, that petty offenders should be treated in county or other private reformatories.

Permission of Managers must be obtained before Committal.

It may perhaps also be not amiss to point out that the permission of the managers of a reformatory must be obtained before the committal of any person to their establishment, as it is apprehended that should a person be committed to a reformatory which is either unable or unwilling to receive him, he must of necessity, on their refusal to do so, be released, as there is no provision in the section that such detention in a reformatory may be in addition to any other sentence. It seems perfectly clear that this would be the case where the offender is tried and sentenced on indictment, for, until this Act was passed, the offences mentioned in s. 2 were not indictable; but whether, in the event of his electing to be dealt with summarily, Justices have power to sentence him to imprisonment, or to a fine, in addition to detention in a reformatory, is possibly a matter of doubt, but it would certainly be safer to assume that no such double power exists, as such power not being especially authorised by the Act, the making of the order for detention would probably

be held to be an adjudication on the case, and would thus debar them from making any additional order embodying fine or imprisonment.

Establishment of Reformatories.

Immediately following the two sections mentioned above, come those which provide for the establishment of inebriate reformatories. The reformatories for the establishment of which authority is thus given are of two kinds: State inebriate reformatories and certified inebriate reformatories.

State Inebriate Reformatories.

State inebriate reformatories may be established by the Secretary of State, and for that purpose he may, with the approval of the Treasury, acquire land, erect or acquire buildings, or appropriate any buildings already vested in him or under his control, the expenses of doing so being paid out of moneys provided by Parliament. The Secretary of State may also make regulations for the management of State inebriate reformatories, subject to which regulations the Prisons Acts, 1865 to 1898, are to apply.

Certified Inebriate Reformatories.

Certified inebriate reformatories may be established by the Council of any county or borough or

by any persons desirous of establishing an inebriate reformatory after obtaining the authority of the Secretary of State, who, if satisfied as to the fitness of the reformatory, and of the persons applying, may grant the necessary certificate. The Secretary of State may also make regulations prescribing the conditions on which certificates are to be granted, held, withdrawn, and resigned. He also has power to make regulations as to the management of the reformatories, and as to the transfer of their inmates, and may with the consent of the Treasury appoint inspectors to be paid out of money provided by Parliament.

Contributions towards their Maintenance.

Contributions towards the expenses of certified inebriate reformatories may be made by the Treasury from the same source, and County and Borough Councils are also empowered to contribute towards their maintenance or may, if they think fit, themselves undertake the establishment and maintenance of such reformatories, for which purpose they are given borrowing powers.

Expenses of conveyance.

Expenses of conveyance to a reformatory are to be defrayed by the police authority by whom the offender is conveyed.

Powers of Officers of Reformatories.

Officers of reformatories authorised in writing have the same powers of arrest with reference to a person ordered to be detained under the Act, and the same protection and privileges as a constable.

Order against Person detained who is possessed of Property.

Where a person detained in a reformatory is possessed of property, an order may be made by a County Court Judge for the payment of the expenses incurred in relation to his detention, and such order is enforceable as a County Court judgment.

Act applied to Scotland and Ireland.

The remaining sections of the Act provide for the amendment in some particulars of the Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), and for the application of the Inebriates Act, 1898, to Scotland and Ireland, but do not alter in any material particular the rights and duties of Justices under the Act.

Powers under the Act exercisable by Justices at Quarter Sessions, and under s. 2 at Petty Sessions by consent.

These rights and duties, as set forth above, will be seen to be in the large majority of cases exercisable

by Justices when sitting in Quarter Sessions, and under s. 1 of the Act only when so sitting, but no doubt there will be some cases under s. 2 where, by the offender electing to be dealt with summarily, Justices, when sitting in Petty Sessions, will be given jurisdiction. To ensure the proper treatment of such cases in accordance with the provisions of the Act, the necessity for the clerk to the Justices to be in communication with certified inebriate reformatories in the neighbourhood cannot be too strongly insisted upon, for, as pointed out above, if an order is made for the detention of an offender in a reformatory which is either unable or unwilling to receive him, his immediate release will be the only result, since his detention is impossible if the reformatory will not receive him, and no other punishment can be inflicted by the Justices, as his case having been already adjudicated on, they will be *functi officio*.

Table of Certified Inebriate Reformatories.

The following table will be of use in this connection, giving as it does a list of the certified inebriate reformatories at present in existence, the sex, and number of inmates received by them, together with the religious and other restrictions enjoined by their rules :—

CERTIFIED INEBRIATE REFORMATORIES IN EXISTENCE, SEPTEMBER, 1899.

County.	Place.	Sex.	No.	Religion.	Restrictions.	To whom to apply for information.
Gloucester	Brentry	Female	35	No restriction	——	Warden, The Royal Victoria Homes, Bristol.
Middlesex	Ashford	Female	56	Roman Catholic	——	The Provincial Superior Convent of the Good Shepherd, East Finchley.
Surrey	Duxhurst, near Reigate	Females under 48 years of age.	12	Protestant	Prostitutes not admitted, nor (if committed under s. 1 of the Act) women previously convicted of crime.	Miss Smyth, Duxhurst Homes, Surrey.
Gloucester	Horfield	Female	25	No restriction	To be used as a Reception House for the Brentry Reformatory.	Warden, the Royal Victoria Homes, Bristol.

From this table it will be seen that at the present time there are no certified reformatories available for male inebriates at all, and that the four reformatories in existence, which are in each case for females only, can accommodate no more than 128 persons.

Procedure.

To obtain an order for admission, application should be made to the person named in the last column of the above table for the necessary forms, which have to be filled up and submitted to the managers of the institution.

Application Form.

The following form, which is in use at the Royal Victoria Homes, Brentry, near Bristol, is sufficient to indicate the nature of the questions which have to be answered on behalf of the proposed inmate :—

THE INEBRIATES ACT, 1898.

The Royal Victoria Homes, near Bristol.

Application is hereby made for the admission of the undermentioned person into one of the Reformatories of the Royal Victoria Homes.

1. Name of proposed inmate.	1.
2. Age.	2.
3. Nationality.	3.
4. Religion.	4.
5. Education.	5.
6. Previous residence.	6.
7. Occupation.	7.
8. Married, single, widowed.	8.
9. Has the proposed inmate been in any other institution ?	9.
10. Is the proposed inmate known as a prostitute ?	10.
11. State *fully* the previous history of the proposed inmate.	11.

Name and address of the person to whom the reply is to be sent.

Regulations in force at Certified Inebriate Reformatories.

The regulations in force at the reformatories mentioned above, and in fact at all certified inebriate reformatories, are made by the Secretary of State, the whole subject having been submitted by him in October, 1898, to a Departmental Committee.

Report of Departmental Committee.

The report of the committee, whose recommendations were adopted by the Secretary of State, was issued in December, 1898, and it may be of interest to those whose duty it is to administer the Inebriates Act, to here set out its salient features, dealing as it does with the treatment of those persons who by their order will in future be committed to the reformatories in question.

Model Rules.

After suggesting that exact compliance with the model rules drawn up by the committee, on the lines of their report, and afterwards approved by the Secretary of State, should not be compulsory, but that a set of rules based on the regulations issued by the Secretary of State should accompany every application for a certificate to establish a reforma-

tory, the report makes certain financial proposals with reference to a Treasury contribution.

Treasury Contribution.

These proposals were considered by the Secretary of State, and upon his recommendation, the Treasury, in January, 1899, under the powers conferred by ss. 8 and 27 of the Act, consented to contribute out of money provided by Parliament, the following "sums towards the expenses of the detention of persons in Certified Inebriate Reformatories":

1. A weekly grant of 16*s.* for each inmate committed under s. 1 of the Act, during the period of his detention in a certified reformatory;
2. A weekly grant of 10*s.* 6*d.* for each inmate committed under s. 2 of the Act during the period of his detention in a reformatory certified for not more than one hundred inmates. Special arrangements to be made in the case of larger institutions.
3. A weekly grant of not more than 6*d.* per diem, at the discretion of the Secretary of State, in respect of each inmate while out on license for a period not exceeding three months;
4. The reasonable expenses of the removal of an inmate from one certified reformatory to

another, or to an auxiliary home, when previously directed by the Secretary of State.

The weekly grants to be allowed subject to the terms of the certificate granted to each reformatory, and to the regulations made by the Secretary of State.

The above scheme to be in force for a period of three years from April 1st, 1899.

After that date, no Treasury grant to be made towards the expenses of the detention of any inmate committed under s. 2, unless a contribution of not less than 3*s*. 6*d*. a week is made by a local authority, under s. 9 of the Act, in respect of such inmate.

Size of Reformatories.

The Report next deals with the question of the size of reformatories, and comes to the conclusion that the ideal arrangement would be for reformatories to contain from fifty to one hundred inmates, to carry on which efficiently, however, would necessitate voluntary subscriptions in addition to the Government grant.

Management and Inspection.

The next point is that of management and inspection, and to insure the competency of the

former a medical man is recommended as superintendent where practicable, full power in the daily management of the reformatory being placed in his hands. To secure adequate inspection it is recommended that the Home Office Inspector be a medical man with a knowledge of institution management, and, if possible, of the treatment of inebriety.

Classification of Inmates.

With regard to the classification of inmates it is suggested that the managers should arrange, as far as practicable, for the separation from other inmates of persons of superior refinement and education, if their conduct is good.

Deprivation of Privileges for Misconduct.

The treatment of all the inmates should be uniform, subject to the deprivation of privileges for misconduct which is recommended as the most satisfactory and efficient method of maintaining order and discipline.

Prostitutes.

The report, however, comes to the conclusion that prostitutes ought not to be received in the same institution as other women.

Treatment of Inmates.

The whole scheme of treatment of inmates ought, in the opinion of the committee, to be based on the principle that they are detained for reformation and not for punishment, and the model regulations approved by the Secretary of State will, on examination, be found to be directed towards the attainment of this result. To quote the words of the committee who are responsible for these regulations, "the improvement of the impaired physical condition, the inculcation of regular and industrious habits, the occupation of the mind by a constant round of duties and reasonable recreations carried on in an intercourse with their fellows, which should be as unrestricted and therefore as cheerful as discipline allows, will be the chief factors in raising the lost self-respect, and sharpening the blunted conscience of the inmates . . . . Every effort should be made on the part of the management to make the institution life as natural and untrammelled as circumstances permit, in order that when the day comes for probationary release, the inmate may feel that he is not returning helpless to a world which has grown strange to him, but that he is resuming his proper work and pursuits with better strength, clearer brain, and firmer self-control."

Employment.

The question of employment should be approached with the view of encouraging each inmate to exercise his faculties and employ his time as remuneratively as possible, and the report accordingly recommends that inmates should be employed in the kinds of work for which their training and capacity suit them, provided the work in question can be exercised and supervised in the reformatory without serious inconvenience.

Safe Custody and Release on License.

The safe custody of inmates is next provided for, and a recommendation is made that release on license should be generally made use of, at the end of twelve months in most cases, and in some instances even after nine months. In this connection the committee suggest the establishment of what they term a "halfway house" between the reformatory and the outside world, a home where the reformed inebriate can obtain work or assistance in procuring it, and where he can take refuge.

Dietary and Sleeping Accommodation.

Dietary and sleeping accommodation are next dealt with, it being suggested that the former be

liberal and as varied as possible, and that the latter be provided either in rooms divided into cubicles or in wards with curtains at the sides of the beds only.

Visits of Friends.

Visits of friends are to be allowed twice a week, Sunday, wherever possible, being one of the appointed days.

Staff.

With regard to the staff of the reformatory, the committee recommend that it should be a condition of employment that all officers are total abstainers.

Punishments.

Punishments which it is proposed to use should, in the opinion of the committee, be stated on application for a certificate; a dietary punishment is given in an appendix to the report.

Dress.

Strict uniformity of dress is deprecated by the report, which recommends that wherever practicable, inmates should be allowed to wear their own clothes.

It will readily be seen from the above summary of the committee's report that life in a reformatory is vastly different from life in a prison, the primary object of the latter being punishment, while the

primary, and indeed the sole, object of the former is reformation.

Points affecting the Success of the Act.

The objects which the Legislature had in view when passing the Inebriates Act, 1898, into law, have been stated above, and indeed, otherwise would be known to all. Whether the Act will be a success, or whether its objects will yet rest unattained, can now only be a matter of surmise. To those who have laboured hard in the cause of temperance, who have the success of the Act at heart, doubts of its efficacy, and schemes for its improvement will occur. There appears, at present, to be a want of apparatus for dealing with cases of inebriety in the homes, and, a much more serious omission, the remedy of which is imperative, there is no single reformatory in existence for males. These two defects will doubtless shortly be remedied.

Among those who have long taken a deep interest in the subject a fear exists that the Act has left too much to amateurs, and that insufficient provisions exist for securing the services of men who have had experience of criminal inebriates. One result of this omission will be that those entrusted with the charge of reformatories will be inclined to sanction experimental treatment, and will for some time be unable to distinguish between the case of the

drunkard past reform, and the drunkard for whom the way of escape is still open. Much valuable time will thus be lost on unworthy and impossible subjects, while others capable of reformation, if taken in time, will suffer from the lack of the attention which they so much need. To meet this defect in the Act it has been suggested in the same experienced quarters that the administration of the Act should be placed in the hands of a central body, other than the Home Office, this body to combine the representatives of persons having experience of criminal inebriates. Were this suggestion carried out, we should have at the fountain-head a body of men especially qualified, and well fitted to deal with the various phases of the subject with which they would be familiar, and inclined to take a personal interest in the efficient supervision of the reformatories under their charge. The law as it exists is essentially of an experimental nature, and one can only hope that by the aid of all those concerned in its administration, one may find its defects discovered and remedied, and the benefits which it promises, realized by those for the amelioration of whose condition the Act in question was placed upon the Statute Book.

CHAPTER VIII.

JUSTICES' FEES.

Fees for Work done by Justices out of Court.

The question of the propriety of Justices taking fees for work done by them at their private houses, or at places other than their Court, has been much discussed. Although the practice has been prevalent in some parts of England, we have until quite recently been left without an official pronouncement on its legality. It would appear to have arisen in the first place from the desire of Justices to cause as little inconvenience as possible to persons wishing to make oaths or declarations, by allowing them to do so at the house of a Justice, instead of requiring them to go perhaps a long and inconvenient journey to the Court; and in the second place, from their very naturally wishing that their clerk should not suffer by losing the fees which would be paid to him by persons in the latter case.

Opinion of the Home Secretary.

Justices who have been in the habit of taking fees under these circumstances, being doubtless under

the impression that they were within their rights in doing so, will find the two following letters, which were made public at the quarterly meeting of the Birmingham City Justices, held October 11th, 1899, of much interest. It will be seen on their perusal that the Home Secretary is of opinion that Justices have no authority to impose or collect fees in the absence of their clerk.

The first letter, which was written in reply to an inquiry on the subject by one of the Birmingham City Justices, is as follows:

Whitehall,
July 29*th*, 1899.

Sir,

I am directed by the Secretary of State to acquaint you in reply to your inquiry respecting the taking of fees by Justices of the Peace in the absence of the clerk of the Justices, that he is advised that it would not be a proper course for a magistrate to pursue to receive and retain fees in respect of work done as a Justice at his own house, and further that it would not be becoming to take clerk's fees for the purpose of handing them over to such clerk, unless there should be some exceptional ground for such action on his part.

I am, sir,
Your obedient servant,

Henry Cunynghame.

The second letter, written in response to a further inquiry, is in the following terms:

Whitehall,
August 11*th*, 1899.

Sir,

With reference to your letter of the 1st inst., I am directed by the Secretary of State to inform you that in his opinion you could not impose or collect fees for administering oaths when the Justices' clerk is not present, and he is not able to suggest any circumstances which would make it proper for you to do so.

I am, sir,
Your obedient servant,

Charles S. Murdoch.

Undesirability of doing Work out of Court.

Accepting, as we are bound to do in default of higher authority, the above official pronouncement, it remains for us to consider the course which should be adopted. The sole argument in favour of the taking of oaths or affirmations at a Justice's private house is that of the convenience of the applicant. On the other hand, it may well be contended that doing so without fees is not only most unfair to the Justices' clerk, but will also have the effect of bringing every applicant to the Justice's house,

where he has nothing to pay, instead of to the Court where a fee is charged.

Resolution of Birmingham Justices.

The balance of argument would appear to be clearly against the desirability of the practice, a conclusion which was come to by the Birmingham City Justices, who, on the motion of the Lord Mayor, passed a resolution in the following terms :

That in the opinion of this meeting, it is not desirable that Justices should take oaths or declarations out of this Court except in cases of emergency.

Safeguarding, as this resolution does, the interests of the applicant in cases of emergency, its adoption by Justices throughout the county may well be recommended as the most satisfactory way, under the law as it at present exists, of dealing with a question in which two such opposing interests are involved.

CHAPTER IX.

SENTENCES.

Justices' Responsibility.

Of all questions connected with the rights and duties of Justices, that of sentences is one which has always been of the gravest and most anxious consideration, and one in which experience increases rather than diminishes anxiety. It has been said that the "Seat of justice is the seat of God"; were this literally so, it would be presumption, indeed, for any mortal to dare to fill it. But justice is undeniably the highest and most sacred of all human attributes, and it is, therefore, perhaps, well that it should be rather exaggerated than minimised, so that a keen sense of responsibility should be ever present.

Solemnity of their Oaths.

It is a subject on which it is little short of presumption to dogmatize, but there are certain points which may be presented, as the result of much

experience and reflection, as aids to reaching conclusions, and which should assuredly be kept continually in mind. The oaths which Justices have taken are important and solemn; they are to act without "fear, favour, or affection." It is believed that few, if any, so far forget their duty as to be influenced by the last two of these considerations, but the first is not so easy. There are "pillories" for, and comments on Justices' decisions, which are intended to affect the action of the Justice, which are derived from newspaper scraps reported in the briefest, and in many cases inaccurate fashion, which do not convey to the mind of the reader the whole weight of the evidence, and leave him ignorant of the surrounding circumstances which have induced the sentence. A magistrate who is doing what is legal and just ought not to be influenced by ephemeral expressions of outside opinion unless better informed than his own. It is very difficult even for a trained lawyer, unless he has been actually present at the trial, or has at all events studied a shorthand note of the evidence, to say whether a wise conclusion has been arrived at; it is almost impossible for a lay writer to form an accurate judgment from a condensed and often imperfect summary, and, therefore, Justices who have acted upon legal evidence, and after having considered all the circumstances surrounding the

case, have given a sentence that they believe to be just, have nothing ultimately to fear from hostile criticism and "pillories." No doubt fleeting popularity is easily achieved by doing that which is thought to be popular, or by hestitating to arrive at the right though unpopular conclusion, by the fear of "what will people say."

Ideal Attributes of Justices.

It has been said as to magistrates, "Choose good men, yet not so good that they are unable to appreciate and to feel for the infirmities of their fellows."

Lord MANSFIELD says, "A popular judge is a deformed thing, and plaudits are fitter for players than for magistrates. I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means; I will not do that which my conscience tells me is wrong, to gain the huzzas of thousands, or the daily praise of all the newspapers that come from the press. I will not avoid doing what I think is right, though it should draw down on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow." But in order to be in such

a mental condition, the Justice must feel he has, at all events, endeavoured to comprehend his subject, and to arrive, in his own mind, at some principle of action. The following reflections are submitted for examination, in the hope that as they result from long and anxious thought, they may present some sound basis of action in the difficult path of human justice.

The Good and Protection of Society.

The one paramount consideration is the Good and the Protection of society. This is the whole foundation of the right of interference with liberty and of "punishment," though this word is somewhat of a misnomer as regards human justice. Society has only the right to defend itself, and has not the right to avenge itself. The arm of the law is not provided with weapons of retribution, but of protection. The prevention of crime and of the spread of its canker is the only allowable direct object. The reformation of the offender, invaluable as it is, is secondary. Its limits are wide and hard to define. Martial law is, for example, under some circumstances a necessity, and severe punishments may well, on occasion, be the penalty for some offences, which in ordinary times and under ordinary circumstances might be adequately dealt with by milder means; yet no one after mature reflection would proscribe martial law

on fitting occasions. So many a sentence which in these days would be inhuman, may at other times have been necessary.

It has been truly said that if every offence was detected and adequately punished, there would be an end of crime.

Questions which Justices may put to themselves.

The following are questions which Justices might put to themselves, whether presiding at Quarter Sessions or sitting in Petty Sessions.

(a.) Is the offence one frequently, or likely to be frequently, committed in the district or place in which they are administering justice, and is it one which is of evil example to others in like case offending?

(b.) Is it an offence easy of detection so that practically every offender is caught and brought to judgment?

(c.) Is it one very mischievous to society, *e.g.*, burglary, housebreaking, and serious assaults?

(d.) Is the particular instance of the offence one which is aggravated in its circumstances? If so, it should be considered what is the maximum penalty provided; and then the circumstances surrounding the case,

including, of course, the previous conduct of the accused, should be taken into consideration.

(e.) Has he been previously convicted of any offence of a similar description? If so, how long ago, and what has been his history since his last conviction?

Fines.

If the case appears to be one where a fine might with propriety be inflicted, it ought to be carefully considered whether the accused is in a position to pay it himself or whether it will be paid by his friends, or by some society of which he is a member.

There is a difference in the case where the fine is paid by a society and where it is paid by the friends of the accused. In the former case but little, if any, loss is incurred by him, but in the latter case, and especially among the poor, it is considered as a matter of honour to repay the person who has advanced the money to liquidate the fine. There are cases within the writer's knowledge that when a fine has been imposed some friend of the accused has at once pawned his coat for the purpose of acquiring the necessary amount. This, of course, applies only to the poor and not to those in the condition of having well-to-do friends.

Statistics and Diminution of Crime.

It has been said that increased severity does not repress offences. Can justification for this be found in any statistical returns? Statistics have been known to be misleading, valuable as they are as aids. There is a strong doubt whether there is at present anything like the diminution of crime which statistics would lead one to suppose. Many undetected crimes are not reported to the police, partly from the greater humanity of the public at large, the indisposition to incur unpopularity by the prosecution, and even more frequently from unwillingness to sacrifice valuable time in addition to the loss already incurred by reason of the offence itself. The unsavoury surroundings of many of our courts, the absence of some system of taking cases so as to save the time of complainants and their witnesses, and the small allowances made to witnesses in cases before justices are very largely responsible for this. In districts where the penalties are inadequate, this frame of mind which militates against the stamping out of offences is aggravated.

When Justices should commit for Trial.

Where an accused person has been previously convicted of a similar offence, and unless there has been a considerable interval between offences and

reasonable evidence of good conduct in the meantime, the Justices should commit for trial. Such rule prevailing, a second conviction entails in itself a very effective deterrent to a large class of ne'er-do-wells who are always hovering about the borderland between respectability and crime, and moreover it secures throughout the particular county more uniformity of treatment, a matter of the highest importance, though absolute uniformity has been found, after careful consideration by the most expert and capable authorities on the subject, neither practicable nor desirable. Moreover, as Quarter Sessions are in no way bound to imprison even old offenders, it does not involve inevitable imprisonment, while whether the prisoner be admitted to recognizances or imprisoned at Quarter Sessions, a far securer hold is obtained upon him both under the Prevention of Crimes Act and otherwise. The practice of sending a prisoner to one short term after another is simply cruel, for it inflicts upon him suffering which, it may be said with almost certainty, never does him the least good, while it accustoms him to prison, habituates him to crime, and usually lands him in penal servitude.

Every Justice should carefully study the Home Office regulations so that he may know what he is inflicting.

Professional Criminals.

There are some crimes, such as burglary and housebreaking, where nearly seventy per cent. of the cases are undetected (though here again statistics are not wholly reliable), as these offences, being usually the work of "professionals," many are often committed by one culprit before he is caught. These men, when at large, are not only a danger in themselves, but able, and frequently very willing, tutors of crime, and the very focus of the contagious disease of criminality.

Mitigating Circumstances.

Although Justices ought to, and usually do, eagerly seek for circumstances of mitigation, it is useless to lecture the accused and to tell him that he has committed "the worst offence of the kind he has ever had before him," and then to impose a fine; it is better to emphasise the mitigating circumstances and to point out to him the severe sentence he might have received without them.

One of the most anxious tasks that a Justice has to perform presents itself when he has to determine whether a further chance should be afforded to the culprit, or whether the time has come for some moderate but sufficient check being placed on his

career which will probably lead alike to deterring others and reforming himself.

Misplaced Leniency.

This is especially the case as regards brutal assaults and riotous behaviour in the streets. Most people would rather suffer pecuniary loss than injury to the person, but the latter is too often dealt with as of little or no importance, and it is no exaggeration to say that in large districts the well-disposed population is so little protected that the respectable dare not interfere with disorderly and ferocious ruffians, to whom fines, subscribed by their companions, present no terrors.

Exemplary Sentences.

If crime is frequent, unwilling as everyone is to send persons to gaol for a long period the first time, it may be necessary for the Justice to do so, and it may also be more merciful in the long run. One or two exemplary sentences will frequently put an absolute stop to a whole class of crime, preventing the contamination of many outside the criminal class, and is in the result infinitely more humane. It must not be forgotten that by recent wholesome legislative and administrative changes, very much has been done in the direction long hoped for, of

classifying offenders and preventing their contamination in gaol by those worse than themselves. Imprisonment must usually be sufficiently sharp to make the person convicted feel its unpleasantness, but not sufficiently long to inure him to his position.

Bail.

When a prisoner is committed for trial, he should always, if possible, and if consistent with securing his appearance to take his trial, be admitted to bail. The question of the amount of bail is in the discretion of the magistrates, and consideration should always be given to the position of the accused and of his friends, and the insuring his surrender.

Release under Recognizances.

In sentencing at Quarter Sessions very large use should be made, where the police is efficient and to be relied upon to inform the Court of any lapse from good conduct or industry of a prisoner who has been released under recognizances, of the power to so do. This is a large and most important subject, but one hardly fitted for these pages. It is a power which should be exercised with the greatest care and with the most cautious discrimination, but where that discrimination and care has been applied, ten years' experience of it at the Middlesex Sessions has shown

to the chairman of that Court that the system is invaluable, even in the case of old offenders. For some years now, from twenty to thirty per cent. of the prisoners convicted or pleading guilty at that court have been thus dealt with, and so far as can be ascertained, with the best possible results. These, however, cannot be hoped for without careful discrimination of cases and careful inquiries, a thoroughly efficient police and some agencies, such as Mr. Wheatley's or the Church of England Police Court Mission, and a fund at the disposal of the court, such as the generosity of the magistrates has provided in that court.

Recognizances for unlimited periods appear in very many circumstances to supply just that inducement to self-restraint which enables those who are not hopelessly weak, to refrain from indulging those criminal passions to which they would otherwise succumb. For those who constantly reappear before the courts, the protection of society and even the good of the criminal must still demand long segregation from temptation.

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